

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 UNITED STATES OF AMERICA,)
4 Plaintiff,) Case No. 3:14-CR-267-BR
5 v.) November 3, 2015
6 FABIAN SANDOVAL-RAMOS(1) and RAUL)
7 ARCILA(3),)
8 Defendants.)
Portland, Oregon

9 TRANSCRIPT OF PROCEEDINGS

10 (Jury Trial - Day 1)

11 BEFORE THE HONORABLE ANNA J. BROWN, DISTRICT JUDGE
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Colloquy

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1 (The following excerpt of testimony was held on
2 Tuesday, November 3, 2015; 8:32 a.m.)

3 THE COURT: We're ready to go on the record, Counsel.
4 Please take your places.

5 Call the case, please.

6 MS. BOLSTAD: Thank you, your Honor.

7 Your Honor, this is the matter of the United States
8 versus Fabian Sandoval-Ramos and Mr. Raul Arcila.

9 I'm not sure the defense is ready with the
10 interpretation.

11 Mr. Muzik, are we all ready to go?

12 INTERPRETER MUZIK: Yes, we are.

13 MS. BOLSTAD: All right. And, your Honor, the
14 defendants are present.

15 Mr. Sandoval-Ramos is represented by Mr. Andersen.

16 Mr. Arcila is represented here by Mr. Sepp.

17 With me at counsel table is Elissa Goloborodko, from
18 Willamette University school of law. She'll be helping at the
19 trial. Later I'll be having other people here.

20 And we're here on day 1 of trial.

21 Parties are ready to proceed, I believe, to discuss
22 jury instructions prior to the jury's arrival.

23 THE COURT: And to complete our discussion regarding
24 the jury selection process.

25 Good morning.

Colloquy

1 MR. SEPP: Good morning, your Honor.

2 THE COURT: I want to note for the record, I received
3 a message that the parties have mutually agreed not to call
4 Mr. Sandoval-Ramos's wife as a witness. And that would, if
5 accurate, render moot the motion filed by Mr. Audet on her
6 behalf.

7 Can counsel for all parties please confirm that no
8 party intends to call her as a witness and, therefore, that
9 motion is moot.

10 MR. SEPP: I don't intend to call her, your Honor.

11 MR. ANDERSEN: Nor do I.

12 MS. BOLSTAD: And the Government does not intend to
13 call her.

14 THE COURT: Under any circumstances, anyone?

15 MS. BOLSTAD: Yes, your Honor.

16 THE COURT: Okay. Very good.

17 Then I'll ask Ms. Boyer to note on the record that
18 the motion Mr. Audet filed is now denied as moot.

19 I want to talk very concisely here -- Counsel, you
20 can be seated -- about the Government's position and the
21 defendants' positions regarding the structure of these charges.
22 I continue to have some confusion about how the parties assert
23 issues should be reflected on the verdict form, addressed in
24 the instruction. And these are issues I want to resolve, if at
25 all possible now, before jury selection, so I can be very

Colloquy

1 direct with the jurors during the jury selection.

2 I do want to be quite specific with them at the
3 beginning of the case that this is a case that originated with
4 five -- well, actually, with six defendants, one of whom has
5 never been located, three of whom have entered guilty pleas,
6 and two of whom are here for trial arising from a heroin
7 overdose resulting in the death of Justin Delong in -- and I'll
8 get the date in front of me so I don't misspeak.

9 MS. BOLSTAD: March 29th, 2014.

10 THE COURT: Thank you.

11 I sent all of you another round of proposed
12 instruction -- instructions, but, as I say, I want to focus for
13 the moment on the structural presentation of the actual
14 elemental analysis of the case.

15 We spoke at some length on Friday about the Supreme
16 Court's use in **Burrage** of the term "element" and the use of the
17 term "enhancement." The Government concedes it must prove the
18 resulting-in-death factor beyond any reasonable doubt.

19 I think it is extraordinarily confusing to the jury
20 not to call this what in practicality it is; that is to say,
21 the Government charges in Count 1 conspiracy to distribute
22 heroin resulting in death.

23 And I, as you saw in this second draft of
24 instructions, constructed the elements to include a specific
25 element of resulting in death as part of the Count 1 conspiracy

Colloquy

7

1 charge.

2 And then I constructed a lesser and included offense
3 analysis that, if the jury was unable to agree on a verdict for
4 Count 1 with an elemental piece of resulting in death, then
5 they were to determine whether the Government proved a lesser
6 included offense of conspiracy to distribute heroin or to
7 distribute heroin.

8 It was not clear to me which lesser included offense
9 the parties were actually focusing on. And while I don't need
10 to be particularly precise on that right now, I would rather
11 know specifically what the parties' positions are.

12 The charge is a conspiracy charge, not a distribution
13 of heroin resulting in death charge. Clearly, distribution of
14 heroin is a lesser and included offense of distribution of
15 heroin resulting in death. But is the lesser and included
16 offense you're focusing on conspiracy to distribute heroin that
17 did not result in death?

18 I do not agree with Mr. Andersen's perspective that
19 the conspiracy the Government has to prove was one for which
20 the object was a distribution of heroin that would result in
21 death. That's just wrong, as a matter of law, so I don't want
22 to spend a lot of time on that. But I do want to know what
23 your positions are on the lesser included feature because it
24 matters right now.

25 Ms. Boyer -- you're not Ms. Boyer. She's Bolstad.

Colloquy

1 Good morning, Ms. Bolstad.

2 Tell me what your position is with respect to the
3 framework for the Count 1 charge and any lesser and included
4 offense.

5 MS. BOLSTAD: I think the framework that you have
6 drafted is about as -- the best we can do. I agree there are
7 some confusing aspects, but I don't have an objection to how
8 you have framed it, telling the jury it's a conspiracy to
9 distribute heroin resulting in death; and making resulting in
10 death one of the elements of the crime. But --

11 THE COURT: So that said --

12 MS. BOLSTAD: -- I have a lot of additional things
13 about how it's worded.

14 THE COURT: Yes. Well, we'll get to that.

15 Yes. But the concept we can live with, and we can
16 spend time on the wording after a bit.

17 What about a lesser and included approach to Count 1?

18 Do you want any kind of lesser and included approach?

19 Do you -- do you want to suffer the risk of a not
20 guilty verdict, and that's the end of Count 1?

21 MS. BOLSTAD: I want to scrap the lesser included on
22 Count 1. I want to scrap it.

23 THE COURT: You don't want one at all?

24 MS. BOLSTAD: Because we have Count 2, which is
25 basically a conspiracy to distribute heroin.

Colloquy

1 THE COURT: That would simplify it.

2 MS. BOLSTAD: (Nods head.)

3 THE COURT: If the Government's going up or down on
4 conspiracy to distribute heroin resulting in death, no lesser
5 and included.

6 MS. BOLSTAD: Correct.

7 THE COURT: All right.

8 Mr. Sepp. You'll get called on first, so you get to
9 go first.

10 MR. SEPP: Good morning.

11 I'm fine with your jury instruction. I too would --
12 I see no point in having the lesser included offense on that
13 first one because, as she pointed out, it's just going to roll
14 into the overlapping conspiracy in Count No. 2.

15 THE COURT: All right. So you agree that I should
16 tell the jury Count 1 is conspiracy to distribute heroin
17 resulting in death, and not be concerned -- I shouldn't be
18 concerned at all with the lesser included offense on Count 1.

19 MR. SEPP: No, your Honor.

20 THE COURT: Mr. Andersen?

21 MR. ANDERSEN: Your Honor, I think that is a workable
22 solution that makes sense to me, too.

23 THE COURT: Thank you.

24 Okay. So that takes care of Count 1. The verdict
25 form, then, will be an up or down, guilty or not guilty for

1 conspiracy to distribute heroin resulting in death.

2 Now, Count 2. Clarify for me, please.

3 This is a more traditional conspiracy to distribute a
4 controlled substance, specifically heroin, with an enhancement
5 of a thousand grams or more. Is that right?

6 MS. BOLSTAD: Yes.

7 THE COURT: So the charge is not conspiracy to
8 distribute a thousand grams or more of heroin. The charge is
9 conspiracy to distribute heroin. And there's -- if the
10 defendant -- either one of them is found guilty, then and only
11 then the jury determines whether the Government has proved an
12 object of the conspiracy was a thousand grams or more.

13 Is that the Government's position?

14 MS. BOLSTAD: Yes, your Honor.

15 THE COURT: And then there isn't any lesser and
16 included offense there at all. We don't need lesser and
17 included at all there?

18 MS. BOLSTAD: We don't if that question of quantity
19 is phrased as a special verdict question.

20 THE COURT: Yes, it would be, because the Government
21 has charged it. It is classically a sentencing enhancement,
22 around this **Burrage** problem -- with which this **Burrage** problem
23 doesn't have any track.

24 I mean, we've been instructing and having specific
25 verdict forms on quantities for purposes of sentencing

11

Colloquy

1 enhancements that are disputed, ever -- for years now, ever
2 since it was held that a defendant has a right to a finding
3 beyond any reasonable doubt for those enhancements that
4 increase exposures. And, here, the 1,000 grams clearly does.

5 So let me ask each of the defense counsel if you
6 agree that the premise, then, on Count 2 is a straightforward
7 presentation to the jury of conspiracy to distribute heroin.
8 In the event a defendant is found guilty, then the jury is
9 asked, did the jury -- did the Government prove beyond a
10 reasonable doubt that an object of the conspiracy was the
11 distribution of 1,000 grams or more of heroin?

12 Mr. --

13 MR. SEPP: Yes, I agree.

14 THE COURT: Mr. Andersen?

15 MR. ANDERSEN: Your Honor, if I'm to understand the
16 Court that that's an object of the conspiracy, so that it was
17 the intent of the conspiracy?

18 THE COURT: Maybe -- maybe I'm creating too high a
19 burden there. Maybe it's that a thousand grams or more was
20 distributed in the course of that conspiracy.

21 MS. BOLSTAD: (Nods head.)

22 THE COURT: I think that's actually the question.

23 MR. ANDERSEN: I would agree with the former, I do
24 have problems with the latter.

25 THE COURT: Of course you would.

1 MR. ANDERSEN: But I understand the Court's position
2 on some of the issues that I've already raised. I don't
3 want --

4 THE COURT: I just want to interrupt you and correct
5 something. I don't take positions. The Court is going to make
6 rulings; you all take positions. I'm not an advocate here for
7 anything other than trying to get it legally correct.

8 And I'll go to the Ninth Circuit model jury
9 instructions for the verbiage, and I'll get you a verdict form.
10 We can fuss with the language specifically. But I want to be
11 sure I agree -- getting clarity from all of you, that the Count
12 2 charge is a straight-up conspiracy to distribute heroin, with
13 a special interrogatory on quantity.

14 MR. ANDERSEN: Yes. I believe that that would --

15 THE COURT: You get a chance to take an exception
16 after you see the way I worded it.

17 MR. ANDERSEN: Thank you.

18 THE COURT: This is how I'm going to present it to
19 the jury for opening -- for discussion.

20 We have two conspiracies. The difference between the
21 two -- Counts 1 and 2 -- is Count 1 is where the Government has
22 to prove distribution of heroin resulting in the death of
23 Mr. Delong and, of course, the defendant's individual
24 involvements with that conspiracy.

25 And Count 2 is a conspiracy to distribute heroin

Colloquy 13

1 without a death factor, and where the Government also is
2 alleging a thousand grams or more.

3 Now, Counts 3 and 4 are similar to Counts 2 -- I'm
4 sorry, to Counts 9 and 10. Similar structurally to Count 2
5 only, A, they apply to Mr. Arcila only; and, B, the quantity is
6 a hundred grams and not a thousand grams?

7 MS. BOLSTAD: Yes, your Honor.

8 THE COURT: And, again, the structure would be the
9 same, an enhancement interrogatory?

10 MS. BOLSTAD: Yes, your Honor.

11 MR. SEPP: Correct, your Honor.

12 THE COURT: And that doesn't affect you,
13 Mr. Andersen. All right.

14 No lesser and included offenses at all, then?

15 MR. SEPP: No. No, your Honor.

16 THE COURT: Okay. Well, there you go.

17 Ms. Bolstad, I think it would be helpful if you made
18 clear to me what language you want relative to the elemental
19 structure of Count 1, so that I don't inadvertently raise an
20 issue that I haven't yet considered.

21 MS. BOLSTAD: Thank you, your Honor.

22 THE COURT: With the jury, that is.

23 MS. BOLSTAD: In the instruction on elements of Count
24 1 --

25 THE COURT: And just for context, let me state for

1 the record the parties are referring to a so-called draft No. 2
2 which I e-mailed to them last night. This is not a final
3 version in any respect. We'll have more dialogue about these
4 before they become final, but for the record this is on the
5 draft 2.

6 What page?

7 MS. BOLSTAD: And, your Honor, when I open this I get
8 different pages, so --

9 THE COURT: Under what heading?

10 MS. BOLSTAD: It's under elements of Count 1.

11 THE COURT: Okay.

12 MS. BOLSTAD: And it would be the third paragraph
13 here.

14 THE COURT: Okay. The use of heroin distributed in
15 the course of this conspiracy resulted in the death of Justin
16 Delong, which means that the heroin that was distributed as an
17 object of the conspiracy was the causative factor of
18 Mr. Delong's death.

19 MS. BOLSTAD: Yes, your Honor.

20 THE COURT: What's erroneous with that?

21 MS. BOLSTAD: It's not erroneous. It is consistent
22 with **Burrage**. However, I request that we make it even more
23 clear to the jury because of case law that has come after
24 **Burrage** saying normal jurors do not necessarily know what is
25 cause in fact and, therefore, I'm requesting the language from

1 page 50 of my requested jury instructions, paragraph 2.

2 And I can read that aloud.

3 THE COURT: Yes. Let me first get it in front of me,
4 though.

5 Paragraph 2, all right.

6 MS. BOLSTAD: Of page 50.

7 What I am requesting is that the Court use this
8 entire paragraph, which is, I think, a more strict instruction
9 than what the Court's draft 2 has.

10 THE COURT: Okay.

11 MS. BOLSTAD: And that is, Whether the distributed
12 heroin resulted in the death of another person means that the
13 distributed heroin was the cause in fact of the person's death.
14 It is not sufficient for the heroin use to have been merely a
15 contributing factor --

16 THE COURT: Okay. I can stop you there. I can't
17 imagine defendants would object to that because it is a bit
18 more stringent.

19 Mr. Sepp?

20 MR. SEPP: No, your Honor. That's fine.

21 THE COURT: Mr. Andersen, I'm going to put this in
22 the next draft, so you can look at it there.

23 But, yes, we will go with this. I won't be reading
24 from my draft 2 to the jury, but the but-for cause -- frankly,
25 I -- it's more confusing to a juror, I think.

1 But if, to protect the record, you want this
2 language -- and it does come from a model instruction, in
3 part -- I'll -- I'll include it in the next draft, so --

4 MS. BOLSTAD: Thank you, your Honor.

5 THE COURT: Okay. What other fundamental concern did
6 you have?

7 I have a question about the mere presence question.

8 MS. BOLSTAD: Right.

9 THE COURT: And this -- you saw at the end, I left
10 some language that I wasn't sure what that referred to, whether
11 it referred only to Mr. Sandoval-Ramos. This business of he's
12 not actually present, I don't know enough about your facts to
13 know what that is referring to. So talk to me about that.

14 MS. BOLSTAD: I think there are two issues here.
15 Both involve Mr. Arcila only.

16 THE COURT: Okay.

17 MS. BOLSTAD: Mr. Sepp, at one time, proposed an
18 alibi defense.

19 THE COURT: Yes.

20 MS. BOLSTAD: So my proposed instruction about alibi
21 is only if that is actually going to be a defense, which I'm
22 not sure it is.

23 MR. SEPP: I don't anticipate using it. It just
24 depends on -- I don't know what Mr. Baker is going to testify
25 to. I may use it at that point. But the mere presence is

1 strictly for Mr. Arcila.

2 THE COURT: Okay. So from your perspective,
3 Mr. Sepp, you want -- you want a mere presence instruction?

4 MR. SEPP: Yes.

5 THE COURT: And you want the more classic mere
6 presence instruction, not one that's just a mere presence
7 instruction. And you want it with respects to Counts 9 and 10.

8 MR. SEPP: Yes, Counts 9 and 10.

9 THE COURT: Not the conspiracy. That's a different
10 scenario. Actually, mere presence in conspiracy is pretty much
11 subsumed in the general instructions.

12 MR. SEPP: Have to do more than just -- yeah.

13 THE COURT: Just meet or be around, right?

14 MR. SEPP: Yes. Yes. That's fine there, but the
15 mere presence --

16 THE COURT: So your view is mere presence only as to
17 your client, and then what else?

18 MR. SEPP: Oh, as to Counts 9 and 10.

19 THE COURT: Okay. And if a general mere presence
20 instruction is present as to Mr. Arcila only, as to Counts 9
21 and 10, do you need anything more than that?

22 MS. BOLSTAD: No, but I think it does raise an
23 evidentiary issue of if that is the defense about Counts 9 and
24 10, that he was just in the vehicle and didn't know what was
25 going on, there is a concern I have about whether that opens

1 the door to this picture of Mr. Arcila with guns, holding what
2 looks to be a big quantity of drugs at the home.

3 It's not --

4 THE COURT: But that would be a rebuttal case issue.

5 MS. BOLSTAD: Correct, your Honor.

6 THE COURT: All right. We'll wait until then.

7 MR. SEPP: Okay.

8 THE COURT: Okay. So what I will do is give you
9 another draft, hopefully by the end of the day, that corrects
10 typos and some things and makes these two topical changes, and
11 puts mere presence in context only with Mr. Arcila. And then
12 we'll have a more deliberate discussion about jury instructions
13 generally.

14 But I want to be sure I'm understanding one more
15 thing about the cooperating witnesses and the exposures they
16 were facing before they made their agreements with the
17 Government.

18 It would help me, Ms. Bolstad, if you would summarize
19 what the exposures each was facing before making a deal with
20 the Government and what the Government has agreed to recommend.
21 If I'm remembering correctly, none of them has a (c)(1)(C)
22 protection. All of them still face a risk of a reasonable
23 sentence as determined by the Court, but the Government has
24 promised certain things.

25 So tell me what the exposure was before, for each,

1 please, and what the recommendations will be now.

2 MS. BOLSTAD: Thank you, your Honor.

3 The exposure for all three cooperators is a 20-year
4 minimum. All three were charged from the get-go with the same
5 crime these defendants face.

6 THE COURT: And did any of them have a prior drug
7 offense that qualified for a potential life mandatory minimum?

8 MS. BOLSTAD: I'm glad you asked.

9 There's two ways of answering the question: The
10 reality of common practice way and the strict reading of the
11 law.

12 THE COURT: Okay.

13 MS. BOLSTAD: Now, let's start with Mr. Baker. At
14 the time of this crime, Mr. Baker had very old convictions for
15 felony possession that wouldn't score any points and don't
16 score any points in his PSR.

17 Actually, all three of these defendants, at the time
18 of this offense, had prior felony possession of a controlled
19 substance offenses. Under a technical reading of the statute,
20 the Government could charge each of those defendants with a
21 mandatory life crime.

22 THE COURT: Let me stop you.

23 Does either defendant intend to introduce that
24 technical hypothetical exposure in front of the jury, to test
25 the bias and interest of any of the cooperators?

1 Not just that they were facing a mandatory 20, but
2 potentially qualify for a mandatory life; in theory, but not in
3 practice in this district.

4 MS. BOLSTAD: Never been done in this district.

5 THE COURT: Because there's reference to that in the
6 jury instruction, I want to take it out if it's not going to
7 come up. But I need to know if either of you are going to --
8 you would need an evidentiary basis.

9 You would need to be able to show that the witness
10 not only knew they were facing a mandatory 20-year minimum, but
11 there was a technical exposure for up to a mandatory life, you
12 know. You would need to know that that witness actually was
13 told that, considered that, considered that the risk, as
14 opposed to the 20-year piece.

15 If none of you have any basis for that, I think it's
16 problematic to throw that into the mix with the jury because,
17 if there's not a factual basis that it actually affected the
18 witness, that the witness was told that by a lawyer or by the
19 prosecutor, it -- it's going to be hard enough for the jury to
20 understand what really was on the mind of the witness when the
21 witness decided to -- to plead.

22 So let me just leave it at this. Before opening
23 statements, we'll talk again. I want a position from each of
24 you then -- each of the defense counsel -- as to whether you
25 feel the need to make an argument that there was actually a --

1 this factor mattered in the calculus of those witnesses.

2 So we'll set that aside for a moment.

3 Continue, Ms. Boyer -- Ms. Bolstad.

4 MS. BOLSTAD: So the Government agrees with that. I
5 mean, technically --

6 THE COURT: So your premise is they were each facing
7 a 20-year mandatory minimum only, and that the mandatory life
8 was not.

9 MS. BOLSTAD: It's not the reality, and it's not what
10 these witnesses were told. They have never heard of life. And
11 if they hear it in trial, that would be very surprising to
12 them.

13 THE COURT: All right.

14 And now what are they getting from the Government?

15 MS. BOLSTAD: Right. So starting at the lowest
16 level, Ms. Godvin pled to Count 3, which is a heroin
17 distribution count exceeding five -- I'm sorry, exceeding 100
18 grams. That creates a five-year mandatory minimum. The
19 Government intends to recommend 60 months in her case.

20 THE COURT: The minimum?

21 MS. BOLSTAD: The minimum, but that also comes -- we
22 get to that minimum through 5K. So it's possible for her to
23 get, I think, any number of sentences.

24 THE COURT: Because the resulting in death is a -- is
25 part of relevant conduct, anyway?

Colloquy

22

1 MS. BOLSTAD: Correct. She starts at 38.

2 THE COURT: I don't know if the jury needs to know
3 that. I'm not telling you can or can't. I'm just trying to
4 figure out the bottom line.

5 Your recommendation, then -- your promise is that
6 you'll recommend a five-year mandatory minimum for her?

7 Okay.

8 MS. BOLSTAD: That is correct.

9 And I need to check the plea. And I'm sorry I don't
10 have that in front of me, but I think that she's agreeing to
11 also recommend 60.

12 THE COURT: Okay. Go on. I don't need any more
13 details than that. Just that -- Mr. Baker?

14 MS. BOLSTAD: Mr. Baker -- so he's the highest of the
15 three.

16 Mr. Baker has pled out to Count 1, distribution of
17 heroin resulting in death. The Government has agreed to drop
18 the 20-year minimum because of his cooperation, and the
19 Government is recommending a low-end sentence. Guideline-wise,
20 low-end is at 151, so twelve and a half years.

21 THE COURT: Okay.

22 MS. BOLSTAD: Finally, Mr. Rosa.

23 THE COURT: Yes.

24 MS. BOLSTAD: He has pled out to, I believe, Count 1,
25 distribution resulting in death. The Government has agreed to

1 drop the 20-year minimum.

2 And, your Honor, I need to look to see what count he
3 pled to, but I know it's drop the 20. And the Government will
4 be recommending 87 months in his case.

5 THE COURT: All right. So, Counsel, my perspective
6 on all of this is that defendants absolutely have the right
7 fully to explore the motivation of each of the cooperating
8 witnesses to testify, and the stakes that were high for them,
9 the risks they were facing when they chose to make the deal or
10 not. I do not want any suggestion to the jury that either or
11 both of the defendants had a similar opportunity. That must
12 not come out to -- in this trial.

13 These juror -- these defendants are presumed
14 innocent. What they chose to do pretrial is their business,
15 and it's as between you and them and the Court. It is not
16 relevant in this case, and I'm not going to let this jury move
17 beyond what the witnesses were facing to an inference of what
18 each of the defendants is facing.

19 That is not appropriate. Not to guess or speculate
20 about whether these defendants had a similar opportunity and
21 chose to decline and whether these defendants are facing --
22 they'll be able to figure out they're facing 20-year mandatory
23 minimums, given the charge. But they'll also know there are
24 exceptions, but we're not going to go there unless I absolutely
25 have to give an instruction to clarify. So you need to stay

1 away from that, any implication about what sentence the
2 defendants are facing if they're found guilty. That is not a
3 matter for the jury.

4 Is that clear? Everybody?

5 Ms. Bolstad?

6 MS. BOLSTAD: Yes, your Honor.

7 THE COURT: Mr. Andersen?

8 MR. ANDERSEN: Yes.

9 MR. SEPP: Yes, your Honor.

10 THE COURT: That said, defense counsel are free to
11 explore what the witnesses knew and what factors they
12 considered when they decided to accept the Government's plea
13 offer.

14 And I want somebody to make clear -- and if it isn't
15 made clear in the evidence itself, I will tell the jury -- that
16 the plea agreements are between the witness and the Government.
17 And the -- in the end, it still is the Court's decision.

18 There has to be some integrity to this process, so
19 that the jury understands the final decision is left up to the
20 Court, although the point is the Court wouldn't have the power
21 to sentence below 20 or the authority to do so if the
22 Government didn't open the door.

23 And that's why I was trying to phrase it that way in
24 that -- my first or second effort to describe that. But I'll
25 do more writing on that point.

Colloquy

25

1 So that -- I'm not going to step in if you show it,
2 but if you do or there's any question about it, I'll give the
3 jury a sua sponte instruction. Okay.

4 MR. ANDERSEN: And, your Honor, and would we be
5 permitted to go through -- I'm assuming we would, but I would
6 like some clarification -- the cooperation agreement letter
7 itself with --

8 THE COURT: Yes.

9 Yes. It's a fact -- okay.

10 Let's turn to voir dire.

11 I want to be sure I have a complete witness list.

12 (Pause, Court and clerk conferring.)

13 THE COURT: We only have 38 jurors who have reported,
14 so we'll do what we have to do.

15 I have the Government's witness list, which has on it
16 21 names.

17 I have Mr. Arcila's witness list that has two names.

18 I don't have a list, Mr. Andersen, from you.

19 Are there any other names that I need to review?

20 MR. ANDERSEN: No.

21 THE COURT: All right.

22 Ms. Boyer, do you have any -- Ms. Bolstad -- I don't
23 know why I'm calling you Ms. Boyer this morning. It's the B
24 thing.

25 Ms. Bolstad, do you have any other names to add to

1 the list, beyond what's combined between you and Mr. Sepp?

2 MS. BOLSTAD: Your Honor, I would just like to
3 clarify that my list has been updated. It was from the joint
4 report I filed last week. So total, I have 19, without
5 Ms. Sanchez anymore.

6 THE COURT: All right. The fact that I'm reading
7 names, though, doesn't mean they're going to be called.
8 They're just names the jurors should know.

9 So I don't have that report in front of me. Let me
10 hand you the list I was looking at, which was your October 19
11 filing. Would you strike from there the names you don't think
12 I need to review.

13 And because of the parties' stipulation that heroin
14 use was the but-for cause of Mr. Delong's death, I assume there
15 aren't going to be any expert witnesses testifying on
16 causation. Is that right?

17 MS. BOLSTAD: No, your Honor.

18 THE COURT: There are?

19 MS. BOLSTAD: There are, because the witness -- it's
20 not just about causation -- it's about --

21 THE COURT: Your witness list was described as a fact
22 witness list, and that's why I read it somewhere.

23 Is there an expert on -- never mind, then.

24 MS. BOLSTAD: Yes, there's an expert witness list.

25 THE COURT: Just cross off the names that you don't

1 want me to read to the jury.

2 MS. BOLSTAD: Okay.

3 THE COURT: All right?

4 Because I'm going to do that pretty quickly.

5 Now, we're going to call for the jurors.

6 Is there any review you need me to do with the
7 process we reviewed late in the day on Friday?

8 Counsel?

9 MR. ANDERSEN: Your Honor, this might be premature,
10 but I just want to briefly mention -- or move that any
11 statements purportedly made by Mr. Sandoval's wife also not be
12 referred to in any way. I'm assuming that that's --

13 THE COURT: Well, I don't know what the nature of the
14 agreement is among you, as to why you're not calling her, but
15 let's make it plain. Does anyone intend to offer evidence
16 about what the defendant's wife said to anybody?

17 MR. SEPP: Defense -- I don't, your Honor.

18 MS. BOLSTAD: No, your Honor.

19 Ms. Imelda Sanchez-Olivera asserted the marital
20 privilege. Mr. Audet showed me proof of that marriage, and so
21 there is really no way around that.

22 THE COURT: So your witnesses who interviewed her are
23 not going to talk about what she said, but that they spoke with
24 her, that they found the phone, that they found the packets.

25 MS. BOLSTAD: Correct.

Colloquy

28

1 THE COURT: All of that.

2 Okay. Very fine.

3 Ms. Boyer, now I do mean to speak to you. Would you
4 please get the jurors.

5 All right. When they come in the room, the first
6 juror, as I said last week, will be in the back row, No. 1.

7 1 through 8, 9 through 16.

8 And then the following jurors will be seated in the
9 front row, ladies, where you're seating -- seated, so you're
10 going to need to move. Everybody needs to move to the very
11 back rows, who's observing, until we have jurors situated.

12 You can move your cart in ahead of the bar, if you
13 would like.

14 DETECTIVE SOMMER: Thank you.

15 THE COURT: Mr. Arcila, how are you feeling today?
16 Any better than Friday?

17 DEFENDANT ARCILLA: A little bit.

18 THE COURT: A little bit?

19 All right. If at any point a break is needed,
20 counsel need to tell me. I'm going to try to go as long as I
21 can, to a logical point, before we take a break, because
22 obviously it will be a time-consuming event to take any break
23 with 38 jurors and everyone else in the room. Get my
24 attention, if a break is needed for any reason.

25 MS. BOLSTAD: Judge, a revised witness list. I can

1 say them out loud, if that's not --

2 THE COURT: Well, so this is different than -- you
3 re-summarized. I can do this.

4 Thank you.

5 MS. BOLSTAD: And, your Honor, are we on the record
6 or off?

7 THE COURT: We are, unless you don't want to be.

8 MS. BOLSTAD: I'm so sorry. I do have revised
9 exhibit lists that we requested. We sent one to Ms. Boyer and
10 I have copies for counsel. Would your Honor like a copy?

11 THE COURT: Yes, please.

12 MS. BOLSTAD: And in those lists we included the old
13 exhibit number on the right column, so that people can track
14 what it used to be.

15 THE COURT: Okay. Okay. (Pause, handed document.)

16 (Prospective jurors enter.)

17 (Jury selection was reported and not requested to be
18 transcribed.)

19 THE COURT: Everything went according to expectation.
20 The other jurors have been excused. A couple of the jurors
21 were waiting outside here and didn't have access to a bag with
22 a cell phone. So one of them is texting, now, the office, to
23 say she's not coming, or home, or whatever.

24 As soon as that's complete, Ms. Boyer will bring them
25 in. I will swear them. I will give them some basic -- very

1 basic instructions because I don't want to take too much more
2 time, and we'll go to opening statements.

3 Have you reviewed all of the materials you're showing
4 to the jury in opening statement with counsel?

5 MS. BOLSTAD: Yes, Counsel is aware that -- of the
6 admitted exhibits, the photographs, et cetera, I might be
7 showing in opening. I've also shared with them two diagrams
8 that they agreed to, both this morning and last night. One is
9 a map and one is the link chart of who's involved.

10 THE COURT: About how long do you expect your opening
11 statement will take?

12 MS. BOLSTAD: Could be half an hour.

13 THE COURT: Okay. We may take a recess after
14 Ms. Bolstad's opening statement, in light of the time of day,
15 and then we'll proceed in order of the Indictment.

16 So, Counsel, you'll go next. And about how long are
17 you expecting?

18 MR. ANDERSEN: I don't expect my opening will be very
19 long at all, your Honor. I expect in the neighborhood of less
20 than ten minutes.

21 MR. SEPP: Same, five to ten minutes, your Honor.

22 THE COURT: Very well.

23 MS. BOLSTAD: And just for witness preparation, your
24 Honor, just to let you know for planning purposes, I have
25 Mr. Kilty as my first witness. I don't anticipate his going

Preliminary Jury Instructions

1 beyond 15 or 20 minutes.

2 Deputy Medical Examiner Lovato. Maybe another 20 to
3 30 minutes.

4 And then I'm going to skip to Ms. Short, from OSP,
5 another 20-minute witness.

6 THE COURT: All right. Ms. Boyer, please bring in
7 the jury.

8 Normally, ladies and gentlemen, we'll be rising every
9 time the jury comes into the room, but not this time because
10 they're going to be walking in and I don't want to interfere
11 with their movement.

12 (Jurors enter, 2:12 p.m.)

13 THE COURT: Ladies and gentlemen, would you all
14 please stand. Raise your right hands to be sworn as our jury,
15 in this case.

16 (Presiding jurors sworn.)

17 THE COURT: Please say "yes" or "I do."

18 THE JURORS: I do.

19 THE COURT: Thank you. Please be seated.

20 Jurors, thank you for your patience and working with
21 us this morning. You are now the jury that will try this case.
22 You may notice there are 13 of you.

23 Mr. Dahl, you're our insurance policy, as the
24 alternate juror, No. 13. You are every bit as important as the
25 other jurors because, in the event something happened and one

Preliminary Jury Instructions

1 juror wasn't able to complete his or her duty, you would be
2 pressed into completing the process.

3 So you really are a jury of 13. If it turns out by
4 the end of the case we still have 13, then you'll be separated
5 from the other jurors. You won't be part of the deliberation.
6 But if we're down to 12, you'll be part of it.

7 So you are very much part of this, but an important
8 insurance policy. You've seen how much effort just went in to
9 picking a jury, and we have many witnesses coming.

10 I -- I've given you a lot of general orientation.
11 I'm not going to take a lot of your time right now because of
12 the time of day. I would like to get right to the opening
13 statements by the lawyers.

14 I want to make a couple of points, though, about
15 scheduling.

16 Today we'll go until about 4:45. 4:30, 4:45, a
17 logical break in the testimony. That will be the normal
18 adjourning time, so you should plan for that for the rest of
19 the week.

20 Tomorrow, the courtroom -- tomorrow, we will have you
21 in the courtroom ready to go at nine o'clock. You're free to
22 be here from eight o'clock on. Any -- earlier than 9:00.

23 But you won't be going down to the main jury room.
24 Ms. Boyer, at the next recess, will show you how to access a
25 jury room behind this wall. That will be your jury room, and

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1 that will be where you'll be whenever you're not in the
2 courtroom here during trial. Or you'll be in the hallway
3 behind us here, which is secure space; meaning none of the
4 parties, none of the witnesses, none of the lawyers will be
5 there.

6 But you'll be free to, you know, walk about.
7 Windows, the like. Restrooms. And at some point we'll get you
8 up to the 16th floor balcony, where there is a beautiful view,
9 and get you some fresh air, too.

10 Ms. Boyer will also give you a button to wear that
11 says "juror." I need you to wear that all the time you're in
12 the building because, as a few of the jurors just noticed when
13 we rode up together, a lawyer steps on the elevator. And you
14 want to be sure that you're labeled so that people don't happen
15 to talk about the case around you. Again, everything is
16 focused on trying to keep your decision process limited to the
17 evidence presented here in front of everyone.

18 I've told you every way I know how, but I'll be
19 continuing to say it. You cannot talk about the case with one
20 another or anyone else. You cannot communicate in any way:
21 Speaking, texting, e-mailing, legal research about the case in
22 any way with anyone until your work is over.

23 When it's over, you're free to do whatever you want
24 by way of research and to communicate with whomever you want
25 about the case, except I always remind jurors that what is said

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1 in the jury room when you deliberate, when you decide your
2 verdict, that ought to be private among the 12 of you. And you
3 can talk about your own opinions to other people, but you
4 shouldn't share what others say from their perspective. That's
5 their private discussion with you as a group of 12, if you
6 understand what I'm saying.

7 So I told you a little bit about what is evidence.
8 It's the testimony of witnesses. You're going to hear some
9 this afternoon.

10 It's the exhibits; documents, and things that are
11 received in evidence. You'll see some of that this afternoon.

12 It's any agreed fact that I or the parties point out
13 to you.

14 Your decision about what the facts are has to be
15 based on evidence.

16 What is not evidence: What is not evidence is what
17 the lawyers say. They are officers of the court, and they are
18 advocates for their clients. They will do their best to be
19 helpful to you, to explain what they think the evidence shows
20 or does not show, to alert you to things they want you to watch
21 out for or to listen for.

22 If they say things that turn out to be different from
23 how the witnesses testify, you're to rely on your memory of
24 what the witnesses say directly, not how the lawyers say the
25 witness said it.

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1 What the lawyers say is not evidence. It's intended
2 to help you. But the evidence comes from the witness stand or
3 the documents or the things.

4 So they'll be asking questions of the witness. The
5 question isn't evidence, but you obviously have to listen to it
6 and understand it to get what the witnesses's answer is, right?

7 So what they say is not evidence.

8 What you see and hear when court is not in session,
9 even if it involves people here in the courtroom, is not
10 evidence. If I tell you at any point during the trial,
11 "Disregard that," or if I sustain an objection, that means
12 disregard that. And the point is to make clear to you what's
13 out of the case. When I tell you something's out, then you
14 can't consider it when you deliberate. I'll try hard to be
15 sure it's clear what's in, so you know what you can consider.

16 Don't concern yourself with why a lawyer makes an
17 objection or why I rule as I do. If I stopped to explain the
18 basis and the ruling, you would be here a lot longer than the
19 days we've projected. Just trust me to -- accept the ruling,
20 please, and then move on.

21 If it's in, it's in like everything else. If it's
22 out, you may not consider it. All right?

23 You've been given notepads. You're free to take
24 notes if you want. You don't have to take notes.

25 At the end of the trial I will give each of you a

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1 complete written set of instructions, so you'll have all of the
2 law and the specific legal charges in front of you. For now, I
3 want to remind you there are four charges being considered.
4 The first two involve Mr. Sandoval-Ramos and Mr. Arcila. The
5 last two involve only Mr. Arcila.

6 The prosecutor will explain those again in her
7 opening statement in a few minutes.

8 So you will have two verdict forms at the end of the
9 case: One for Mr. Sandoval-Ramos, one for Mr. Arcila. I make
10 two forms because these are two different individuals. Each
11 has charges against him. Each charge is to be considered
12 separately from the other.

13 And the idea of having two verdicts is just to remind
14 you these are two people, each with separate cases and
15 separate -- the right to this continued presumption of
16 innocence. They are not guilty unless and until the Government
17 proves them guilty beyond any reasonable doubt. They have the
18 right to this trial, the right to confront the witnesses, the
19 right not to have to prove they are innocent.

20 And so that's how we start now. This is the
21 Government's opportunity to put that proof before you.

22 Ms. Bolstad, then, will address you on behalf of the
23 Government. Please give her your attention.

24 Counsel.

25 MS. BOLSTAD: Thank you, your Honor.

Opening Statement - by Ms. Bolstad

1 May it please the Court, Counsel, ladies and
2 gentlemen of the jury.

3 THE COURT: Please stand near the microphone. I'm
4 sorry, I need to be able to hear you.

5 MS. BOLSTAD: Is it okay to move the microphone, your
6 Honor?

7 THE COURT: Yes, as long as you stay near it.

8 MS. BOLSTAD: Ladies and gentlemen, my name is Leah
9 Bolstad. I represent the United States.

10 Before I get -- get into all of the facts, I want to
11 make introductions.

12 With me at counsel table is Detective Sommer
13 Andersen. She is the lead investigator in this case. She'll
14 be presenting you some testimony and evidence.

15 Also with me is Ms. Susan Cooke. She's with our
16 litigation support team. She will help me show you the
17 exhibits in this trial on those screens in front of you and, on
18 the witness stand, the screen for the witness.

19 Finally, Elissa Goloborodko. As I told you before,
20 she is a law student. She'll be helping me with this trial.

21 On Saturday, March 29th, 2014, 25-year-old Dustin
22 Kilty woke up late. It was a Saturday. He woke up late, as
23 most 25-year-olds are known to do. He went to the kitchen to
24 make breakfast, to share that breakfast with his roommates.

25 He lived in an apartment with two other young men.

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1 One of those roommates went away for the weekend. He wasn't
2 there. The other roommate was Justin Delong.

3 And I say "was" Justin Delong because Justin Delong
4 died on the morning of March 29th when Mr. Kilty had woken up
5 to make breakfast. Mr. Kilty called for his roommate to wake
6 up. Didn't hear anything in response.

7 Mr. Kilty went into his roommate's room, his good
8 friend's, and found Justin Delong, age 26, dead on the floor.
9 He went to him, and Mr. Delong's body was cold and stiff. He
10 was clearly no longer with us.

11 Mr. Kilty immediately called 9-1-1. Emergency
12 responders showed up at the scene of that -- of that location
13 they shared, that house in Aloha, Oregon. There was nothing
14 that they could do. Mr. Delong had already died.

15 Investigators also showed up to the scene,
16 immediately. These investigators are trained to look at heroin
17 overdose cases and treat those scenes like homicides. That
18 means they devote resources to investigating where the drugs
19 came from that resulted in this young man's death.

20 Detective Andersen and her partner, Detective McNair,
21 worked for this Washington County sheriff's interagency
22 narcotics team. It's a task force.

23 And what they did was they immediately started
24 working up the chain of distribution. All right?

25 The first thing they need to determine is who

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1 distributed these drugs to Mr. Delong. And the key piece of
2 evidence that they look for in any heroin overdose case is the
3 cellular telephone. It's the key piece of evidence.

4 So they picked up Mr. Delong -- this young dead man.
5 They picked up his cell phone and they assumed his identity.
6 And they looked in that phone for recent -- any recent evidence
7 of who distributed the drugs. Who was he in touch with?

8 And immediately they were able to identify Morgan
9 Godvin as the person from whom Mr. Delong obtained heroin the
10 night before.

11 So this death was on a Saturday morning. The text
12 message is from Friday night, to paint the picture. Mr. Delong
13 needed heroin.

14 You'll hear evidence in this case through testimony
15 that Mr. Delong had struggled to get off of his heroin
16 addiction. He had spent several months clean. He had a job.
17 He worked with his roommate, Mr. Kilty. They were roofers.

18 But you will hear about the pull of this drug and how
19 desperate an addict is to get it when that need hits you. So
20 Mr. Delong reached out to his friend Morgan on a Friday night.
21 And he asked her, can he get a gram, a single gram from her.

22 Ms. Godvin, who shared an apartment in Southeast
23 Portland with two other two young men, she agreed.

24 Mr. Delong came over to her house, picked up a gram
25 of heroin for \$80, went back to his home, used it. And his

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1 respiratory system shut down and he died.

2 So in this case you're going to hear about the chain
3 that led to that death. And I would like to summarize it for
4 you now.

5 It starts -- well, this is the end of the chain,
6 okay. Ladies and gentlemen, these are two of the men who are
7 on trial: Fabian Sandoval-Ramos, who's sitting here. And Raul
8 Arcila, sitting behind me with his attorney.

9 Mr. Delong's death on Saturday, I've already told you
10 he obtained that heroin from Ms. Godvin. Ms. Godvin will
11 testify in this trial. She will tell you about what happened.

12 Ms. Godvin purchased her heroin from Michael Rosa.
13 That's one of her roommates. You will hear from Mr. Rosa in
14 this trial. He will testify.

15 Mr. Rosa purchases his heroin from Mr. Shane Baker.

16 You will hear Mr. Shane Baker testify in this trial.

17 All of these individuals -- Mr. Baker, Mr. Rosa, and
18 Ms. Godvin -- will admit to you that they are heroin addicts.
19 And they were definitely heroin addicts at the time this all
20 happened. They will admit to you that they sold heroin, in
21 part, to feed their own addiction.

22 You will hear evidence from Mr. Baker about where he
23 obtained his heroin.

24 And at this stage, ladies and gentlemen, I want to
25 introduce you to you a concept that you're going to hear about

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1 in trial. And if any of you have ever ordered a pizza, you're
2 going to know what I'm talking about.

3 This is a dispatch drug trafficking organization.
4 There is a dispatch phone with a 442 area code. That's what
5 the customers call. And just like Domino's, Pizza Hut, there
6 are a lot of people out there who want heroin. They call a
7 dispatch phone that's not even in Oregon, ladies and gentlemen.
8 It's at a call center. It's -- it's not in this district.

9 And when Shane Baker would place his orders for
10 heroin, like calling Pizza Hut, the person that he calls is not
11 the guy who delivers the heroin. The guy he calls is a
12 dispatcher who sends runners out into the field to deliver
13 these goods. And so when Mr. Baker would place these calls,
14 runners would show up.

15 And the phones tell the story.

16 Mexican Bobby, the phone identified with the 442
17 number, that identification comes from Mr. Baker's phone. That
18 was his code, almost like if you saved Pizza Hut in your
19 code -- in your phone, you might call it Pizza Hut. But the
20 person that you call, who answers the phone at Pizza Hut,
21 doesn't always tell you exactly who they are.

22 That's exactly what happened here. Shane Baker
23 placed his calls for heroin. The dispatch phone would then
24 call people in Oregon, especially Placido Ramirez-Coronel.
25 Mr. Coronel and his partner, Mr. Arcila, would then show up to

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1 deliver the heroin. And that's a pattern that happened again
2 and again, in this case.

3 You'll also hear evidence at the end of this case
4 that connects Fabian Sandoval-Ramos to this dispatch
5 organization through the phone tolls, but also through
6 surveillance observations here in Oregon linking Mr. Fabian
7 Sandoval-Ramos with the people who delivered the drugs.

8 And at this stage, ladies and gentlemen, it's
9 important to introduce you to this idea of two locations.
10 You're going to hear a lot in this case about two locations.

11 One location -- we'll call it location 1 -- is where
12 Mr. Arcila lived. It's basically a stash house. It is a
13 location devoted to the manufacture and the packaging of heroin
14 for distribution in this community. Mr. Arcila lived at that
15 location with Mr. Placido Ramirez-Coronel.

16 Location No. 2 was occupied by Mr. Fabian
17 Sandoval-Ramos. It is not a drug stash house. It is his
18 family home. Fabian Sandoval-Ramos lived there with his wife
19 and his children.

20 But what's interesting about these two locations is
21 what links them. You will hear evidence that Fabian
22 Sandoval-Ramos, he does not live at location 1, but he's the
23 power subscriber. He pays the power bill there.

24 And when those two young men, Mr. Arcila and
25 Mr. Placido Ramirez-Coronel -- you'll hear evidence that, when

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1 they go to deliver the drugs, they do so in a vehicle that is
2 registered in the name Fabian Sandoval-Ramos. You'll hear
3 evidence that that vehicle, registered in his name (pointing),
4 had a trap compartment.

5 And you'll hear a lot of evidence from drug officers,
6 narcotics experts, who will tell you about these aftermarket
7 additions placed in vehicles. Secret compartments to hide and
8 store drugs while they're delivered throughout the community.

9 This particular car had a trap in the front passenger
10 airbag area, in a hollowed-out space where there should have
11 been an airbag. Instead, it was filled with -- at times, 13
12 ounces of heroin, which is nearly one pound.

13 Based on the investigation that you'll be presented
14 with in this case, as Judge Brown told you, there will be four
15 charges that you will need to decide:

16 No. 1, conspiracy to distribute heroin resulting in
17 death. Both defendants are charged in that conspiracy.

18 No. 2, conspiracy to distribute heroin in an amount
19 exceeding 1,000 grams. 1,000 grams is a kilo of heroin.

20 For your reference, this is less than 1 gram of
21 heroin (indicating). It's almost the size of a tip of a
22 pencil. This less-than-a-gram, there's over a thousand of
23 these in a single kilogram.

24 This is what was found at Mr. Delong's residence.
25 This is what remained of the 1 gram of heroin that he had. And

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1 you will hear evidence that a single dose of heroin like this
2 can kill you.

3 And there are a thousand of those doses, or more.
4 There's many thousands of those doses within a kilogram of
5 heroin.

6 Two conspiracy counts.

7 Count 3 and 4 in this case, which are actually
8 labeled Counts 9 and 10, those counts only involve the
9 defendant Raul Arcila. Those are not conspiracy counts over a
10 long period of time. They're from a single day in time.

11 So first you'll hear evidence about March 31st, for
12 Count 9. That's when Mr. Arcila showed up in the red Honda
13 Passport, registered in the name of Fabian Sandoval-Ramos, and
14 delivered 8 ounces of heroin to Shane Baker.

15 That event was monitored by the police. They set it
16 up. They obtained the heroin afterwards. They tested the
17 heroin, and they recorded the buy.

18 Count 10 on Mr. Arcila takes place two days later, on
19 April 2nd. After he had delivered 8 ounces to Mr. Baker on the
20 31st, he again delivered what he thought was going to be
21 another 8 ounces to Mr. Baker on April 2nd. But instead of
22 Mr. Baker showing up, the police met Mr. Arcila at the buy
23 location. And they arrested Mr. Arcila and the driver of the
24 vehicle, Mr. Ramirez-Coronel. They had 13 ounces of heroin in
25 the vehicle that time.

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1 It wasn't the same vehicle. It was a different Honda
2 vehicle. This one was not registered in the name of Fabian
3 Sandoval-Ramos, but it was registered to his address at
4 location No. 2.

5 It, too, had a trap compartment. That's -- it was
6 right in front of the front passenger seat. 13 ounces of
7 heroin on this occasion.

8 The 13 ounces consisted of the 8 ounces that he
9 thought he was going to deliver to Mr. Baker, plus another
10 other 5 -- another 5 ounces for a customer we don't even know.

11 I told you about the charges. What I want to cover
12 with you now is about things that are not big issues. Okay?

13 Because I want you to be able to focus your attention
14 in this case on what is the issue; what is it that you are
15 going to be called upon to figure out.

16 So let's start with the easy stuff. What are things
17 that there's not a dispute about?

18 There's three.

19 First, I do not anticipate that there is going to be
20 a dispute in this case about whether the substances seized were
21 in fact heroin. Okay?

22 The parties have agreed -- we have an agreement that
23 the lab tested all of these seized drugs and the lab confirmed
24 the presence of heroin. We're not even going to call chemists
25 to testify to that because everybody agrees to that fact.

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1 The second thing that there's really no dispute about
2 here is about the quantities involved. Right?

3 You've got a vehicle showing up with 8 ounces one
4 day, 13 ounces two days later. There's no dispute that that is
5 over 100 grams of heroin. Okay?

6 It's up to 200 grams. When he delivers 8 ounces,
7 that's 200 grams. So there's really no dispute about that
8 quantity question as to Mr. Arcila's counts.

9 The third thing that is not in dispute, and you heard
10 a little bit about it this morning, is the cause of death. The
11 parties have stipulated that this victim died as a result of a
12 heroin overdose. We've agreed that, if Mr. Delong had not used
13 heroin, he would not have died.

14 And so then what is at issue? What are you called
15 upon in this trial to decide? What facts do you need to be on
16 the lookout for?

17 Two huge issues.

18 No. 1, did these two defendants -- did these two
19 participate in a conspiracy to distribute heroin?

20 That's the first thing. Did they have an agreement
21 to go and sell drugs, make that happen?

22 The second huge issue is did the heroin that killed
23 Mr. Delong -- we all agree it killed him. Did he get that
24 heroin from this conspiracy?

25 And so the evidence that you'll be presented with in

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1 this trial is really to address those two things.

2 You're going to hear a lot of evidence of this low
3 level of the chain. And the reason you're going to hear about
4 the chain, the chain, the chain (snapping fingers), is because
5 the Government has to prove that the heroin that killed
6 Mr. Delong came from this conspiracy. And so we have to build
7 that for you from the ground up.

8 And here's how I think of it, in case it helps you.

9 This trial and the evidence that you're going to hear
10 is like a book. Sometimes it might feel like a book that's too
11 long for you, but there's five basic chapters for that book.
12 Okay?

13 And the trial will follow those chapters in
14 chronological order.

15 Chapter 1. Somebody died.

16 In that chapter you'll hear from the medical examiner
17 who did an autopsy, determined cause of death. But he also
18 gives you information that you need that goes to the chain.
19 He'll tell you about how long does it take for heroin to kill
20 somebody.

21 When do you think that the person ingested the
22 heroin?

23 Which helps you decide, did this heroin come from
24 this chain?

25 Chapter 2 of this story will be all about Morgan

Opening Statement - by Ms. Bolstad

1 Godvin and Michael Rosa. So when the police posed as
2 Mr. Delong and ordered up more heroin, they learned it was from
3 Morgan Godvin. They determined where Ms. Godvin lived: In
4 Portland. Southeast 187th. They determined that she lived
5 there with somebody named Michael Rosa.

6 Detective Andersen went and got a search warrant
7 signed by a judge. I want to search this residence. I think
8 they distribute drugs.

9 And when the police showed up at that apartment, sure
10 enough, they saw all of the classic signs of drug distribution.

11 This is the apartment (indicating).

12 Ms. Godvin is pictured there in the blue shirt.

13 This is the living area with all of the telltale
14 signs of heroin addiction.

15 Ms. Godvin, when she testifies, will tell you what
16 she was going through at this time of life.

17 This is March 2014. Her mother died in December
18 2013, and Ms. Godvin was in a really bad place. She was using
19 up to 2 and 3 grams of heroin a day. Depressed. Her life was
20 ruined. Jobless. She was in a rough spot.

21 What she had going for her was the steady supply of
22 heroin from her friend and roommate, Mr. Rosa.

23 You'll hear evidence in this case that when the
24 police came into this living room and they confronted Morgan
25 Godvin with the fact that her heroin -- the heroin she

Opening Statement - by Ms. Bolstad

1 distributed last night had killed Justin Delong, she was at a
2 crossroads. She knew Justin, Mr. Delong. She felt bad. And
3 she agreed to cooperate and provide information. She told the
4 police, I get my heroin from Michael Rosa. He lives upstairs.
5 Yes, I'm willing to cooperate.

6 She knew she was in trouble. But as you'll hear her
7 testify, the thing she feared more than being in trouble was
8 going to jail and being without heroin. That was terrifying
9 for her, but she did it.

10 You'll hear that the police in this apartment seized
11 over 100 grams of heroin, digital scales, multiple digital
12 scales to weigh out the heroin.

13 They also seized drug records, which are very simple.
14 Sometimes simplistic. They're on pieces of notebook paper.
15 Amounts, adding up amounts owed and amounts paid. And
16 customers. Just like any business.

17 You'll hear that when the police were at this
18 location, Mr. Rosa arrived in his car and he parked. And he
19 walked into something he probably wishes he had just kept
20 driving. The police confronted Mr. Rosa. They explained to
21 him what had happened, that someone died using heroin that came
22 from him. Like Ms. Godvin, he accepted responsibility. He
23 told the police what happened.

24 And when the police asked him if he would be willing
25 to help them work up the chain of distribution to get to the

Opening Statement - by Ms. Bolstad

1 higher level dealers, Mr. Rosa did what was asked of him. He
2 said, I get my heroin from Shane Baker. I get 4 to 8 ounces
3 every few days. Yes, I will help you set up a buy with
4 Mr. Baker.

5 Not only did he identify Mr. Baker, he said, Shane
6 Baker is my only source of supply. Which eliminates the idea
7 that there's other chains at issue. Godvin only got her heroin
8 from Rosa. Rosa only got his heroin from Shane Baker. And so
9 then the next natural step for the police is to go to Mr. Shane
10 Baker's apartment.

11 But first, they were careful. They were deliberate.
12 They obtained a search warrant, judicial authorization to
13 search Mr. Baker's house. They used Mr. Rosa to make a
14 controlled buy with Mr. Baker.

15 That means that they recorded a phone call. They
16 watched what happened. They recorded the buy where Mr. Rosa
17 went in and purchased heroin from Mr. Baker. And they took the
18 heroin from Mr. Rosa once he got it.

19 It was 1 ounce, or a piece, approximately 25 grams of
20 heroin.

21 And in so doing they were able to confirm -- the
22 police were able to confirm. Now we have this source,
23 Mr. Baker, who's now three levels up the chain. And all of
24 that work took place in 24 hours. That they were up to this
25 third-level dealer, Mr. Baker, the kind of guy who's delivering

Opening Statement - by Ms. Bolstad

1 8 ounces at a time. That's a half pound of heroin.

2 And now we're talking serious money. 8 ounces of
3 heroin costs \$6,000. That's what Michael Rosa was buying every
4 few days from Mr. Baker.

5 So they used Mr. Rosa to make a call. They set that
6 up with Mr. Baker, and they catch Mr. Baker the next -- on
7 March 31st. That's Monday.

8 They go to Mr. Baker's house with a search warrant.
9 And when they get there, to that Beaverton apartment, they see
10 all of the signs of a heroin addiction as well as heroin
11 distribution.

12 They find rubbers, rubber bands used to get veins,
13 get working veins to intravenously inject drugs.

14 They find drug packaging materials all over. Digital
15 scales, \$4,000 in drug proceeds.

16 And multiple cell phones. Because, remember, the
17 cell phones. That's how business is accomplished in the drug
18 trafficking world.

19 They arrested Mr. Baker. Mr. Baker found himself --
20 found himself at a crossroads. They told Mr. Baker what had
21 happened. Someone died using heroin that came from you.
22 That's a very serious thing. You're looking at serious time.
23 Are you willing to cooperate with us so that we can find the
24 higher levels of the chain, so that we can go after people who
25 are above you, bringing in more heroin than what you were

Opening Statement - by Ms. Bolstad

1 dealing?

2 Mr. Baker agreed. He knows the system. It's not his
3 first time in it. He did what was probably best for him in
4 that scenario. He made a choice.

5 But the investigators didn't just leave it up to
6 people like Mr. Baker. Right?

7 These investigations are never about we have to
8 believe him 100 percent. They look for corroboration. They
9 look in Mr. Baker's phone. Who else is his source? Is there
10 any other source of supply?

11 No. What Mr. Baker reported is that he gets his
12 heroin when he calls this number, this 442 number for Mexican
13 Bobby.

14 Mr. Baker's never obtained the real, full, legal name
15 from Mexican Bobby. Because, as you'll hear, this is not a
16 business where people exchange business cards. This is not a
17 business where people identify themselves by full legal name
18 because what they're engaged in is crime. Anonymity is
19 important.

20 So Mr. Baker only knows this person that he calls for
21 drugs as Mexican Bobby.

22 The police use Mr. Baker to make the call. They
23 record the call. He orders up 8 ounces of heroin from his
24 source. And sure enough, on March 31st the two people that he
25 described showed up with the 8 ounces, and they delivered it to

Opening Statement - by Ms. Bolstad

1 him in the 7-Eleven parking lot out in Milwaukie.

2 Mr. Baker provided a description because he has met
3 people who deliver the drugs before. And he described the
4 person that he thought was Mexican Bobby in the following way,
5 which becomes important later. He says he's about 30 years
6 old. He has a fat round face. He's -- he lives near -- he
7 thinks he lives near the location where he delivers the drugs,
8 that 7-Eleven, because they always show up really quickly after
9 I call.

10 He also says -- so short, round face, fat. He says
11 he drives a red sport utility vehicle.

12 Sure enough, that vehicle is the one that shows up,
13 delivers the 8 ounces. That vehicle is registered to Fabian
14 Sandoval-Ramos.

15 Police ask him, Do you have any other source of
16 supply, Mr. Baker? Anyone else giving you heroin right now?

17 Nope. This organization is reliable and they always
18 have what I need. There's no quantity that I could order that
19 this organization would not have.

20 So when that red Passport shows up to the 7-Eleven,
21 the police are watching. They are watching very carefully, and
22 they follow that red Passport.

23 They don't stop it, right? They want to know where
24 is that car going to go, so that they can work up the chain.

25 They follow the red Honda Passport after it leaves

Opening Statement - by Ms. Bolstad

1 the buy, and it goes to location No. 1. The red Honda Passport
2 goes into the garage, business is closed for the night.

3 Police get an address, though. 11759 Southeast 64th.
4 And police can do a lot with an address, as you'll hear.

5 They looked at the power subscriber for that address,
6 and determined Fabian Sandoval-Ramos was the guy paying the
7 bills.

8 So they looked up the name Fabian Sandoval-Ramos in
9 DMV records and they came up with a picture. That's from
10 Mr. Fabian Sandoval-Ramos's Washington driver's license. It's
11 Government Exhibit 59.

12 So what did they do with this picture? Because they
13 have -- they're dealing with a ghost. They don't know who
14 Mexican Bobby is. So they show this picture to Shane Baker.
15 They say, Do you recognize this person?

16 And Shane Baker says (snapping fingers) that's who --
17 that's who has delivered. That's the guy. That's Mexican
18 Bobby.

19 So investigators think they're onto something. It's
20 all adding up to them.

21 So the whole Shane Baker side of this book, that's
22 all Chapter 3. Shane Baker's cooperating. He's made a
23 controlled buy of drugs. He's led agents to locations and
24 people. That's what he did. Chapter 3.

25 So Chapter 4 in this book is what the police do next.

Opening Statement - by Ms. Bolstad

1 Because now they have two locations that are of
2 interest, so they spend a little time getting their ducks in a
3 row. They get a search warrant for location No. 1 on April
4 2nd, 2014.

5 This is all within days of Mr. Delong's overdose.
6 They're working quickly, so that chain is strong.

7 They do a search warrant at location No. 1 on April
8 1st, but, before they do, they want to sort of stir the pot.
9 They don't want to just show up and see what's there. They
10 want to make another order for heroin and to see what would
11 happen.

12 So they have Mr. Baker, who's now in custody, place a
13 call to Mexican Bobby. This is on April 2nd. They say, Order
14 up another 8 ounces.

15 So Mr. Baker does. An agreement is reached to
16 deliver. Police are watching these locations, right? when this
17 happens.

18 They watch as a green Honda Civic arrives in the area
19 of location 1 right after that deal gets lined up, right? We
20 need 8 ounces. A car shows up at location 1. It's a green
21 Honda Civic. Three men go into location 1, the stash house.
22 Two men come out of location 1 and get back in the green Civic,
23 and they drive directly to the 7-Eleven.

24 When they get there, they're a little hinked up.
25 They don't see Mr. Baker. He's not there. He's in custody.

Opening Statement - by Ms. Bolstad

1 This is all a setup.

2 And Mr. Baker gets calls from Mexican Bobby saying,
3 Where are you? We need you to move locations. Go to the
4 Lowe's or go to the Home Depot. 7-Eleven's not good.

5 Baker's in custody, so he's sort of out of the loop.

6 But the police pull that car over before it can go
7 anywhere because they're pretty sure that that car is there to
8 deliver exactly what Baker ordered.

9 Inside the car -- the police run a dog around the
10 car. The K-9 alerts to the presence of heroin. The police
11 search the car, and inside the glove box is 13 ounces of
12 heroin.

13 The passenger of that vehicle is Raul Arcila. The
14 driver is Placido.

15 They ask Raul, What's going on? What's -- what are
16 you here to do?

17 Mr. Arcila denies really being involved, denies
18 knowing anything about drugs. But then the police ask him a
19 really important question that sometimes, if you have been
20 caught doing something, you think twice about answering.

21 They say, Okay, you don't know anything about this,
22 but are your fingerprints going to be on the drugs that we
23 found in the glove box?

24 And he says, Oh, probably (nodding head). My
25 fingerprints are probably going to be on those.

Opening Statement - by Ms. Bolstad

1 So they arrest Raul Arcila. They arrest Placido
2 Ramirez-Coronel. And they take those two men back to location
3 1, where they have a search warrant.

4 What do they find inside location No. 1, ladies and
5 gentlemen?

6 They find really sparse living quarters.

7 And you're going to see evidence in trial of the
8 pictures of the inside of this house. Okay? This is not a
9 well-furnished home where people are there for long-term
10 living. There's mattresses on the floor. Hardly any
11 furniture.

12 And the kitchen seems to be pretty devoted to one
13 thing and one thing only, and that's drug trafficking. The
14 kitchen is full of packaging material. The kitchen cupboards
15 are full of just plastic baggies and sugar, which you'll hear
16 is an ingredient that goes into heroin. It's something that
17 drug traffickers use to take one quantity of heroin, dilute it;
18 it becomes a bigger quantity, more money.

19 Throughout the kitchen is just drug packaging, drug
20 packaging, drug packaging. There is a heat sealer on the
21 kitchen counter, which is used to seal the bags that the heroin
22 is put into because you'll hear evidence that heroin is a
23 smelly substance. It smells strongly of vinegar. It's
24 something that dogs can alert on quickly (snapping fingers), so
25 you need a heat sealer to seal that product inside a bag that

Opening Statement - by Ms. Bolstad

1 nobody can smell.

2 In this picture, Government's Exhibit 77, you see the
3 cellophane. And there was a lot of rolls of cellophane because
4 what they would do is wrap these bundles over and over and
5 over, in hopes that it would lock in the scent.

6 In the back of this picture you see a few bags of
7 lactose. Like sugar, it's another thing that's used to dilute
8 drugs. Okay? Makes more product. That means you can sell
9 more and make more money.

10 Keep those lactose bags in mind. This is all at
11 location 1.

12 They also find drug records, which we have those
13 (indicating) as a physical exhibit in this trial. You'll be
14 allowed to look at this in the jury room.

15 They find these ledgers with lists. Lists of numbers
16 of who owes who, what. Okay?

17 And you'll hear from an expert that it's pretty rare
18 to see any drug ledgers where they write down, like, "heroin,"
19 right? Because nobody wants to write that down because, if you
20 get caught, you don't want that in a drug ledger.

21 Which brings us to Chapter 5.

22 When the police are searching this home, location 1,
23 they're wondering where's Fabian Sandoval-Ramos? We thought he
24 would be here at location 1. His name's on the power. He's
25 the registered owner of the car that is at this location.

Opening Statement - by Ms. Bolstad

1 Where is he?

2 Surveillance officers at location 2 saw him. That's
3 when they confirmed Fabian Sandoval-Ramos does not live at
4 location 1. He lives at location 2. They saw
5 Mr. Sandoval-Ramos going inside and outside that home in the
6 same hours where his other house, the stash house, was being
7 searched by police.

8 The people who were arrested in the car, the
9 co-defendant, Mr. Arcila, the police took his phone. So there
10 couldn't be any contact between those two who are arrested in
11 the car and Fabian Sandoval-Ramos. And so police saw him going
12 in and out and in and out of his home.

13 They also saw something interesting. They saw a
14 woman come out of his home and go to the dumpster and throw
15 something out. And the police thought something's going on at
16 location No. 2. They applied for a search warrant. Got their
17 ducks in a row.

18 And within hours, within hours of starting the search
19 at location 1, they were there at location No. 2 to go inside.

20 Inside, they find Mr. Fabian Sandoval-Ramos but they
21 don't find a lot of drugs. In fact, they don't find any drugs.

22 Remember that cell phone issue that I told you about?

23 Let's go back a second.

24 Mr. Arcila, at the traffic stop, the agent seized his
25 phone. They searched it with his consent. Inside Mr. Arcila's

Opening Statement - by Ms. Bolstad

1 phone, they found text messages about drug dealing. They found
2 references within the past three days in his phone, to pounds
3 and halves and prices. Somewhat coded language, but you'll
4 hear about those text messages.

5 When they get to Fabian Sandoval-Ramos's house,
6 though, what do you think the police are there to look for?
7 Cell phones. They didn't find a cell phone involved in drug
8 dealing inside, but they did go look in the dumpster.

9 You'll see Government Exhibit 115 in this trial.

10 They found a cracked, broken phone in the dumpster.
11 It was sort of near something else in the dumpster; bags of
12 unopened lactose that matched identically what was found at
13 location No. 1, the stash house where all of the drugs were
14 packaged and mixed and distributed.

15 They asked Mr. Sandoval-Ramos about this. What's --
16 why did you put this in the dumpster? What happened to your
17 phone?

18 And he said, My phone broke. It broke this evening
19 between 5:00 and 6:00 p.m. Which happens to be exactly when
20 the police were arresting his coworkers. It's exactly when the
21 police were executing the search warrant at location 1. And
22 that's exactly when Mr. Sandoval-Ramos, you'll hear, had his
23 phone break. So he threw it in the dumpster with the lactose
24 and nothing else.

25 Finally, ladies and gentlemen, once we get to the end

Opening Statement - by Ms. Bolstad

1 there, of Chapter 5, what -- what the police did in this case
2 is they asked a DEA fingerprint analyst to take a look at the
3 drug records that were seized at location 1. These ledgers
4 that keep track of who owes who what.

5 And the DEA fingerprint analyst carefully examined
6 each page, and he found several fingerprints. In fact, all
7 three of the defendants involved in March 31st and April 2nd,
8 all three of their fingerprints were found in this book:
9 Fabian Sandoval-Ramos; Raul Arcila; and the driver of the
10 vehicle, Placido Ramirez-Coronel. All three of their
11 fingerprints were in a book that only has drug records in it.

12 That's the summary of the evidence that you will hear
13 in this case.

14 The case is going to move quickly. I have my
15 witnesses ready to go. We're not going to waste your time.
16 And I know it's a lot of evidence to hear about, but trust me,
17 it involves building a chain from the ground up. It requires
18 detail from the bottom of that chain to the top.

19 We're going to go through it chapter-by-chapter, not
20 going to waste your time. At the end of the case, after the
21 presentation of all of the evidence, which consists of witness
22 testimony and physical exhibits and photographs, I will come
23 back to you and I will ask you to find both defendants guilty
24 of participating in a conspiracy to distribute heroin, guilty
25 that that conspiracy to distribute heroin resulted in the death

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1 of a 26-year-old in Aloha, Oregon, on March 29th, 2014.

2 Thank you in advance for your attention.

3 THE COURT: Thank you, Ms. Bolstad.

4 Jurors, we'll take a 15-minute recess and give you a
5 chance to stretch your legs, use the facilities, and the like.
6 Contact home or office, if you need to.

7 Remember, you may tell them you've been seated on a
8 criminal case. The judge has ordered you not to talk about it.
9 If they push you, you tell them I've also ordered you to tell
10 me about it. It's very serious that you don't let anyone ask
11 you.

12 And this is why: The minute you say you're on a drug
13 case, someone will say, Oh, I know about something. I'm trying
14 to ensure that you're not put in that situation.

15 During our recesses through the trial, I'm going to
16 ask you to please leave your notes on the chair here so they'll
17 be here when you get back.

18 We'll take just 15 minutes. Ms. Boyer will also give
19 you some information about how to get into this floor and
20 secure space from the main hallway when you come in tomorrow
21 morning.

22 So that's all the instructions for now.

23 Thank you, everyone, for your attention.

24 Ladies and gentlemen, please rise for the jury.

25 15 minutes, please, Ms. Boyer.

Colloquy

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1 Watch your step. Take your coats with you, folks.
2 You'll have a place to leave them in the jury room; and your
3 bags, and so forth. It will be secure back there.

4 (Jurors exit, 3:06 p.m.)

5 THE COURT: Thank you, everyone. Please be seated.

6 Does the Government have anything for the record at
7 the beginning of this recess?

8 MS. BOLSTAD: No, your Honor.

9 THE COURT: Counsel, either of you?

10 MR. ANDERSEN: No.

11 MR. SEPP: No, your Honor.

12 THE COURT: All right. Then we are in recess.
13 Defendants may use the facilities, and the marshals will
14 accommodate them.

15 Thank you, everyone. We're off the record.

16 (Recess taken, 3:07 p.m. to 3:25 p.m.)

17 THE COURT: Thank you, everyone. Please be seated.
18 Counsel.

19 MS. BOLSTAD: Thank you, your Honor.

20 Leah Bolstad.

21 Just one -- actually, two issues I have for the Court
22 was, No. 1, the Government has no objection to the audio
23 equipment in the courtroom for the audience members who might
24 need it. I think that was requested by Mr. Andersen.

25 THE COURT: Yes. During the recess Ms. Boyer

1 indicated, Mr. Andersen, that you had requested on behalf of
2 your client's wife, that she be permitted to use headphones to
3 pick up the translations as they're going on during court.
4 We're happy to provide that as long as we continue to have
5 enough equipment available.

6 The primary concern is that your client is receiving
7 the transmissions. If we run out of batteries or things, we
8 won't be able to accommodate that.

9 But I appreciate the Government noting on the record
10 no objection.

11 Your next point.

12 MS. BOLSTAD: Next point, your Honor, is this
13 afternoon I intend to call a civilian witness named Timothy
14 Goshorn, who is on the list, and I want the Court to be aware
15 before I ask him questions.

16 He does not have an agreement with the Government,
17 but he is going to be talking about his participation in drug
18 distribution. He's not worried about it.

19 THE COURT: Does he have a lawyer?

20 MS. BOLSTAD: Not with him.

21 He's here with his father and his son. He is -- he
22 was a heroin addict. He's been clean for one year.

23 I told him, I can't promise you anything on the state
24 side, and we don't have a deal --

25 THE COURT: I'm going to have to talk to him in

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1 advance, on the record, to ensure he knows he has a right not
2 to answer your questions and to incriminate himself. And that
3 has to be outside the presence of the jury.

4 Do you want me to do that now?

5 MS. BOLSTAD: If that works for you. I've had that
6 conversation with him, but I understand --

7 THE COURT: It needs to be on a public record, in the
8 event he later is prosecuted and challenges this.

9 So, yes, bring him in.

10 MS. BOLSTAD: Thank you.

11 (Pause.)

12 THE COURT: Sir, would you come forward here, please,
13 to the witness chair.

14 Just go ahead and take a seat.

15 Good afternoon.

16 MR. GOSHORN: Good afternoon.

17 THE COURT: Go ahead and get close to the microphone.
18 I don't need to place you under oath right now, but I do need
19 to ask you some questions and be sure you understand what might
20 be happening this afternoon.

21 Would you tell me please, first, your full name.

22 MR. GOSHORN: Timothy Oran Goshorn.

23 THE COURT: Would you spell it, please.

24 MR. GOSHORN: T-I-M-O-T-H-Y, O-R-A-N, G-O-S-H-O-R-N.

25 THE COURT: All right.

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1 The prosecutor has just alerted me that she may be
2 asking you questions this afternoon that could result in -- in,
3 if you answer truthfully, your incriminating yourself; that is
4 to say, your admitting facts that could show you have in the
5 past engaged in criminal activity.

6 I want to be sure, first of all, you understand you
7 have an absolute right not to answer questions the answers to
8 which might incriminate you.

9 Do you understand you have that right?

10 MR. GOSHORN: Yes.

11 THE COURT: You also have the right to have a lawyer
12 advise you about this kind of exposure. And if you can't
13 afford an attorney, I would appoint one to represent you, to
14 help you make that decision.

15 Do you understand?

16 MR. GOSHORN: Yeah.

17 THE COURT: Have you had a lawyer giving you advice
18 about these situations before?

19 MR. GOSHORN: No.

20 THE COURT: Is there a reason you haven't asked for a
21 lawyer?

22 MR. GOSHORN: I don't feel like it's necessary.

23 THE COURT: All right.

24 I don't know what the exposure might be to you, but I
25 do know that the two men who are on trial here are facing very

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1 serious charges. I know that other witnesses in this case were
2 facing very serious charges, including up to mandatory minimums
3 of 20 years in prison. I don't know if that is an exposure
4 that you face.

5 Do you understand?

6 MR. GOSHORN: Yes.

7 THE COURT: A lawyer representing you could help you
8 figure out what risks you might have if you do in fact
9 truthfully say things that incriminate you.

10 Do you understand?

11 MR. GOSHORN: Yes.

12 THE COURT: Do you want me to get you a lawyer --

13 MR. GOSHORN: You're kind of making me feel like I
14 should say yes.

15 THE COURT: I'm not trying to make you do anything.

16 What I'm trying to avoid is this: In the future, if
17 you're prosecuted, I don't want you making a motion in whatever
18 court in which you're accused saying, I didn't know that I was
19 facing exposure. I wouldn't have spoken if I had been told --

20 MR. GOSHORN: Um-hmm.

21 THE COURT: -- all of the bad things that could
22 happen.

23 Do you see what I'm saying?

24 MR. GOSHORN: Um-hmm.

25 THE COURT: I don't -- I want you to be able to make

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1 a decision on your own, but to do that it has to be voluntary
2 and it has to be knowing. You have to know what you're doing,
3 and you have to know what the consequences can be.

4 Do you understand?

5 MR. GOSHORN: Um-hmm.

6 I mean, I would like to know if there was a
7 possibility of consequences.

8 THE COURT: And I can't promise that to you because I
9 don't know anything about what you're going to say.

10 MR. GOSHORN: Um-hmm.

11 Well, would that be slowing down the process for
12 this --

13 THE COURT: Well, it would probably mean you wouldn't
14 testify this afternoon because I would have to get a lawyer
15 appointed, someone who could meet with you to help you. But
16 that's doable.

17 There's no magic -- is there, Ms. Bolstad, to your
18 testifying -- his testifying this afternoon, other than
19 convenience?

20 MS. BOLSTAD: Just convenience, your Honor.

21 THE COURT: All right. And if you wanted a lawyer, I
22 would ask my staff to contact the federal defender's office
23 across the street and find you a lawyer. It probably won't be
24 someone there because their office did represent
25 Mr. Sandoval-Ramos in an earlier proceeding.

Colloquy

1 But I just want to be sure you've thought through
2 this on your own. I'm not trying to scare you or frighten you.

3 MR. GOSHORN: I came into this feeling like if there
4 was any -- if there was enough information and evidence against
5 me, if they chose to prosecute me, that I would -- they would
6 have no problem doing that.

7 THE COURT: Anyway?

8 MR. GOSHORN: Yeah.

9 THE COURT: Without you talking to me.

10 MR. GOSHORN: Yeah, like my phone has enough
11 information on it to say everything.

12 That's why I feel like -- I felt like it would --

13 THE COURT: So here -- here's the situation.

14 Lawyers are not magicians. They don't get to change
15 the facts, but they do protect; help a client protect himself
16 from exposing himself unnecessarily. They can't change what
17 has already happened.

18 MR. GOSHORN: Um-hmm.

19 THE COURT: Right?

20 And as I say, I don't know what you're facing, but
21 the Government -- the lawyer for the Government told me no
22 promises had been made to you.

23 MR. GOSHORN: Um-hmm.

24 When -- when it said that no promises have been made,
25 that's also the promise that I'm not going to be -- nothing

Colloquy

1 will come punishment-wise towards me?

2 That promise hasn't been made.

3 THE COURT: Has or hasn't?

4 MR. GOSHORN: Hasn't.

5 THE COURT: That's the point.

6 MR. GOSHORN: That's one of the promises, that
7 there's no --

8 THE COURT: Nobody has promised you any protection
9 yet.

10 MR. GOSHORN: Yeah.

11 THE COURT: Okay. So all I'm saying is it's my
12 responsibility to be sure, if you take the witness stand and
13 testify truthfully in a way that incriminates yourself, you
14 know that you have a right not to answer those questions.

15 MR. GOSHORN: Um-hmm.

16 THE COURT: And if -- if you are -- if you're not
17 going to answer the questions, then tell me now.

18 MR. GOSHORN: I intended to answer 100 percent
19 truthfully, but yes, they will severely be incriminating
20 myself, honestly.

21 THE COURT: And I want to be sure you know that you
22 have a right to a lawyer if you want one.

23 And if you do, we'll pause you being called a
24 witness, and we'll get a lawyer involved.

25 But you don't have to have a lawyer. The point is

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1 it's your choice.

2 MR. GOSHORN: I really don't want to --

3 MS. BOLSTAD: Judge, if I could jump in here for just
4 a second?

5 THE COURT: Just a minute.

6 What did you say?

7 MR. GOSHORN: I -- obviously, I do not want to put
8 myself in jeopardy of -- you know, I -- I've changed my life
9 around 100 percent. And I don't want the past to affect the
10 positive, you know.

11 THE COURT: Here's another point.

12 You're going to be under oath. There will be a
13 record made. If ever in the future there's another proceeding
14 and you testify differently, there's a record here.

15 MR. GOSHORN: Um-hmm.

16 THE COURT: And it would be pointed out.

17 Do you understand?

18 MR. GOSHORN: (Nods head.)

19 THE COURT: Is that a yes?

20 MR. GOSHORN: Yes. But when you say a future
21 proceeding, what do you mean?

22 THE COURT: Well, what if a prosecutor chose to file
23 a case against you?

24 MR. GOSHORN: Oh, okay.

25 THE COURT: And then you chose to testify again or

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1 make statements that were different from what you say today.

2 MR. GOSHORN: Um-hmm.

3 THE COURT: Then we have perjury, maybe.

4 MR. GOSHORN: Um-hmm.

5 THE COURT: And then we have risks of being
6 inconsistent in your statements.

7 MR. GOSHORN: Um-hmm.

8 THE COURT: I want to point that out to you.

9 Do you understand --

10 MR. GOSHORN: Yes, I do.

11 THE COURT: Yes, Ms. Bolstad. What did you want to
12 add?

13 MS. BOLSTAD: Sorry, your Honor.

14 And I -- I have nothing to say about whether you
15 should get an attorney or not. That's your decision.

16 But for the record, the Government's intent with this
17 witness is to ask him questions about statements he already
18 made, that were recorded after **Miranda** at this incident. We
19 already have all of his statements in a recorded setting. The
20 police have his statements.

21 So those are the things I would be asking this
22 witness today.

23 MR. GOSHORN: That's what I thought.

24 THE COURT: So you decide whether you want to testify
25 or not. You decide whether you want me to appoint a lawyer to

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1 represent you before you decide.

2 MR. GOSHORN: I feel comfortable doing it without a
3 lawyer.

4 THE COURT: Okay. Are you thinking clearly today?

5 MR. GOSHORN: Yes.

6 THE COURT: Have you had any kind of medicine --

7 MR. GOSHORN: Prescribed only. No.

8 THE COURT: Pardon me?

9 MR. GOSHORN: Prescribed medication, but nothing
10 that's altering my judgment.

11 THE COURT: Okay. That's the point.

12 MR. GOSHORN: Um-hmm.

13 THE COURT: Are you in a good frame of mind to make
14 this important decision?

15 MR. GOSHORN: Yes. Yes. Yes.

16 THE COURT: All right. Well, I'm satisfied you can
17 testify if that's your choice.

18 MR. GOSHORN: Okay.

19 THE COURT: Go ahead and step down. You are going to
20 have to wait outside. We have some things to do first.

21 (Mr. Goshorn exits courtroom.)

22 THE COURT: All right. Is there any other matter
23 before we bring in the jury for opening statements?

24 MS. BOLSTAD: No, your Honor.

25 THE COURT: All right. Please bring in the jury.

Opening Statement - by Mr. Andersen

1 Thank you. Everyone please rise for the jury.

2 (Jurors enter, 3:37 p.m.)

3 THE COURT: Thank you. Everyone please be seated.

4 All right, jurors. All set?

5 Okay. Now we're going to hear from Mr. Ben Andersen
6 on behalf of Mr. Sandoval Sandoval-Ramos. Please give him your
7 attention for his opening statement.

8 Counsel.

9 MR. ANDERSEN: Thank you, your Honor.

10 Now, ladies and gentlemen, as the judge just told
11 you, I'm Ben Andersen. I am Fabian Sandoval-Ramos's attorney.

12 Now, I'm going to say something bold right now. I'm
13 going to tell you that I'm going to be brief. And I'm going to
14 try to stick with that promise, and I think I can.

15 Now, you are going to hear a lot of evidence in the
16 next few days. A lot of evidence about drug dealing, about
17 heroin, about the lifestyle. You're going to hear a lot of
18 evidence from a number of witnesses that the Government has
19 already laid out for you.

20 I don't really want to get into the specifics of each
21 one of those witnesses. And I'm talking primarily about Morgan
22 Godvin, about Michael Rosa, about Shane Baker. Those are the
23 people that the Government says formed the chain.

24 But I will ask you to consider what we've already
25 talked about quite a bit. What reasons these individuals would

Opening Statement - by Mr. Andersen

1 have to say the things that they have said and that presumably
2 they're going to say when they testify. What motivations they
3 might have for saying what they say.

4 Now, I think you may have picked up from the
5 Government's opening as well, there is a lot of -- a lot of
6 evidence about all of these other people and about heroin and
7 about drug dealing, but there's not a whole lot of evidence
8 that you're going to hear about Mr. Sandoval. So that's
9 something I want you to consider as well.

10 And as the judge has told you, if it's enough, it's
11 enough. So what the job of the jury is -- is to do is to
12 examine the evidence as it will be presented to you and decide
13 if the evidence you have heard is enough.

14 And, ladies and gentlemen, I am going to return at
15 the end of this whole case and ask you to agree with me that
16 the evidence you will have heard is not going to be enough.

17 So what I'm asking you to do, ladies and gentlemen,
18 is to keep an open mind. Let the testimony you're about to
19 hear, let the evidence that you're about to see guide your
20 decision here.

21 It is a -- it is an important duty that you have all
22 agreed to undertake here. It is a -- this story begins with a
23 tragic occurrence. There's no denying that. But where it goes
24 from here is up to you.

25 So with that, I'll leave you to it. And I think

Opening Statement - by Mr. Sepp

1 after we hear from Mr. Sepp we're going to hear some evidence.

2 Thank you.

3 THE COURT: Thank you, Mr. Andersen.

4 And yes, ladies and gentlemen, you'll next hear from
5 Robert Sepp. He is counsel for Mr. Raul Arcila. Please give
6 him your attention.

7 MR. SEPP: Thank you, your Honor.

8 Good afternoon. I'm the attorney for Raul Arcila,
9 and I'm going to be just as brief as Mr. Andersen was.

10 This is a case that started with the tragedy.
11 However, what needs to be paid close attention to is that chain
12 of distribution.

13 With each person who testified that it was the sole
14 source, analyze that individual for his biasness, her biasness.
15 Ms. Godvin, Mr. Baker, Ms. Rosa. They all pled. They all had
16 certain benefits for doing that.

17 And you heard, ad nauseam, this morning during voir
18 dire that, you know, they received benefits. And were you able
19 to analyze that according to their testimony?

20 What there is here is evidence involving Mr. Raul
21 Arcila. It doesn't come in until March 31st.

22 Now, I'm not going to start there. I'm going to
23 start with what the evidence might show on -- on April 2nd.

24 Indeed, he was there at the -- at the 7-Eleven.
25 There is no disputing the fact that he was a passenger in the

Opening Statement - by Mr. Sepp

1 green Honda that was the subject of the arrest on that day.

2 The evidence, however, will not show that there was
3 any sort of fingerprint evidence establishing that, (A), these
4 fingerprints were on the drugs that were collected from the
5 Honda that day. There was no fingerprints evidence showing
6 that there was -- that he had touched whatever mechanism it is
7 that opens this hidden compartment.

8 Also, it was a hidden compartment. The drugs were
9 found within that compartment.

10 The vehicle was not registered to Mr. Arcila. The
11 vehicle was not insured by Mr. Arcila, nor was it driven by
12 Mr. Arcila.

13 Following this arrest on April 2nd, he was
14 transported with Mr. Ramirez to the 69th Street -- location 1,
15 as the Government has indicated.

16 During that -- during that transportation he didn't
17 say anything. When he got there, he didn't say anything in
18 there, either.

19 What they did do is he sat quietly while the police
20 officers, detectives, DEA, dogs, all went through the house,
21 looking for evidence.

22 Now, what evidence did they discover about drug
23 distribution?

24 Quite a bit, and you'll see that.

25 What evidence did they discover linking Mr. Arcila to

Opening Statement - by Mr. Sepp

1 any of that? Was one fingerprint. One thumbprint. One
2 thumbprint on a black notebook.

3 Not fingerprints right here, indicating that it was
4 ever picked up. No fingerprints on the back -- on the back
5 side of a piece of paper, showing that it was picked up.

6 Just one thumbprint on this -- in this notebook.

7 They -- at that point they seized -- they seized
8 scales; a wrapping machine, that heat sealer; cutting stuff, as
9 in -- in the form of the powders; the lactose and the sugar.

10 As you saw from the pictures in the opening, there
11 were lots of boxes containing the wrappings or the product that
12 was used to seal the drugs. On none of those boxes, on none of
13 the scales, and on none of the heat-sealing machine was there
14 any fingerprints found of Mr. Arcila.

15 Nor were there fingerprints found on the cash that
16 was found in a box.

17 The -- the room that his personal effects were in,
18 they did find that he had gone in there -- excuse me, that he
19 had personal effects in there. Identification, an old W-2, and
20 a -- and some other -- other documents.

21 But in that room where his effects were they did not
22 find additional cash. They did not find any drug
23 paraphernalia. They did not find a thing in his room.

24 Again, all of the evidence there, all they had was
25 the one thumbprint.

Opening Statement - by Mr. Sepp

1 Going back to March 31st, where there was a setup buy
2 involving Shane Baker. The only person that identifies
3 Mr. Arcila as a person in the vehicle, eyewitness testimony, is
4 Mr. Shane Baker.

5 That is the only evidence there. Whether it's
6 enough, that is your determination.

7 On his phone, they did find text messages. They are
8 not clear. It could mean quite a few different things. Your
9 interpretation, that is what you will come to. However, that
10 is not a consistent way of communicating the drug deal in this
11 conspiracy.

12 This conspiracy theory is that it's Domino's.
13 Telephone calls are sent to California, and then another call
14 is sent to someone to distribute. These are text messages that
15 they find.

16 You will also find, in that text message, the amounts
17 that they're talking about are well below the amounts that the
18 theory is on this conspiracy, where people are coming to them
19 buying ounces worth thousands of dollars, not hundreds.

20 When you look back and when you look at all of the --
21 all of the information, when you process it all, all we ask is
22 that you reserve judgment; you don't make a decision prior to
23 all of the evidence being in; and that you, in the end, hold
24 the Government to their burden of proving every element beyond
25 a reasonable doubt; and that you return a verdict of not

1 guilty.

2 Thank you.

3 THE COURT: Thank you, Mr. Sepp.

4 All right. Jurors, now, finally -- you've not heard
5 any evidence to this point. Now, finally, we begin with the
6 evidence.

7 The Government having the burden of proof, we're
8 beginning now with Ms. Bolstad calling the witnesses on behalf
9 of the Government's case.

10 Your first witness is?

11 MS. BOLSTAD: Thank you, your Honor. The Government
12 calls Dustin Kilty.

13 THE COURT: All right. Mr. Kilty, would you come
14 here, please, all the way to the witness chair.

15 Come all -- to the front of the room and up the
16 stairs, please.

17 Good afternoon.

18 Please remain standing, face the jury and the deputy
19 there. Raise your right hand to be sworn.

20 (Witness sworn.)

21 THE WITNESS: I do.

22 THE CLERK: Please take a seat.

23 THE COURT: Bring yourself close in to the microphone
24 there. Thank you.

25 Tell us your -- that's okay. Tell us your full name,

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1 and spell all of it.

2 THE WITNESS: Dustin James David Kilty. D-U-S-T-I-N,
3 J-A-M-E-S, D-A-V-I-D, K-I-L-T-Y.

4 THE COURT: Thank you.

5 Ms. Bolstad.

6 MS. BOLSTAD: Thank you, your Honor.

7 DIRECT EXAMINATION

8 BY MS. BOLSTAD:

9 Q. Good afternoon, Mr. Kilty.

10 As you know, this is a criminal prosecution involving
11 the death of Mr. Delong.

12 Did you know Mr. Delong?

13 A. I do.

14 Q. Tell the jury about how you knew him.

15 A. I met him at Roof Life of Oregon, a place that we both
16 worked at. That's where I met him, became friends with him.

17 Q. How long had you -- did you say you worked with him?

18 A. Yeah.

19 Q. How long had you worked with him at the roofing -- Roof
20 Life company?

21 A. I believe it was probably six to eight months before he
22 passed.

23 Q. So here's what I want to cover with you.

24 I want to go over your memories of the day of the
25 death. And then we'll rewind and we'll talk about the night

1 before, okay?

2 A. Okay.

3 Q. So let's talk about where this occurred.

4 Where did you live?

5 A. We lived off of Blanton Street in Aloha, Oregon.

6 Q. Did anyone live with you?

7 A. Yes, the son of the homeowner. I believe Shawn Carter is
8 his name.

9 Q. And what was the nature of your relationship with
10 Mr. Delong?

11 A. Basically, we started out as coworkers at Roof Life.

12 He was -- I was a cleaner, a roof cleaner in the
13 maintenance department, and he was a ground guy. And he became
14 basically my ground guy; we worked together, basically every
15 day of the week.

16 Q. Were you just coworkers?

17 A. Since the first day we worked together, the first day we
18 were coworkers, and every day on we were best friends after
19 that.

20 Q. Okay. When you lived on Blanton Street, how long had you
21 been at that location with Mr. Delong?

22 A. I don't know the exact amount of time. I believe it was --
23 through fixing the place up and living there, I believe it was
24 probably six weeks.

25 Q. Okay. And how old were you in March of 2014? So last

Kilty - D

1 year?

2 A. I would have been 25, I believe.

3 Q. And how old was Mr. Delong?

4 A. He was 26.

5 Q. Do you remember when the paramedics came to your
6 apartment -- or to your house? I'm sorry.

7 A. I do.

8 Q. Who all was home that morning?

9 A. It was just myself -- well, Justin.

10 Q. Okay. And your other roommate, the third gentlemen, where
11 was he?

12 A. I believe he was either in California or in some sort of
13 massage, chiropractic training, for the weekend or -- or past
14 week. Something like that.

15 Q. All right. So tell us about what happened on Saturday
16 morning.

17 A. Saturday morning I woke up, I believe about noon. I woke
18 up and started making breakfast. It was late in the day. I
19 was going to do yardwork and stuff like that.

20 So I woke up. I started making bacon and hash
21 browns. Once I got done with those two, or close to being done
22 cooking those things, kept putting them in the oven to stay
23 warm -- Justin was very particular about how his eggs were
24 cooked. And he liked even -- I tried to show him that I can
25 cook them pretty well, and he admitted I did, but he still

Kilty - D

1 liked to cook them his own way.

2 So I put those -- the bacon and hash browns in the
3 oven to stay warm and called from the kitchen to him, down the
4 hall. Didn't get any response.

5 So I put on some music that I turned him onto, kind
6 of loud, hoping that would wake him up kind of indirectly,
7 since it was Saturday. And nothing.

8 So I went to his door and kind of put my head in a
9 little bit and, you know, said his name a couple of times. And
10 nothing. So I put my head in far enough to see. And I saw him
11 laying there, off his bed, naked.

12 And don't really know what I thought at that point,
13 but I knew I didn't want to wake him up, you know, right --
14 standing right over top of him while he was naked. So I just
15 kind of said his name a couple of times, sternly, from the
16 door. And didn't get a response at all. He didn't move or
17 anything.

18 So I stepped into the room. And as I stepped further
19 into the room, I could see past the desk that was blocking his
20 upper half and saw -- saw that he wasn't just asleep. He was
21 obviously having some issues.

22 And so I ran over to him or jumped over to him as
23 quick as I could. And by the amount of -- you know, blood and
24 stuff that was there, I didn't want to check vitals from his
25 face or from his neck, which I have been trained is one of the

Kilty - D

1 better places to do so. So --

2 Q. Let me stop you there, Mr. Kilty.

3 A. Yeah.

4 Q. You mentioned you have been trained.

5 What do you mean?

6 A. I was a volunteer firefighter for Odell Wy'East Department,
7 up in Hood River County.

8 Q. So do you have CPR training?

9 A. First aid, CPR, yeah. And --

10 Q. Okay. So when you went over to his body, tell the jury
11 what it was that you saw.

12 Was his head in a certain position? Feet?

13 Tell them what you saw.

14 A. Well, so his feet -- his legs were up on the bed. If the
15 bed's like this, his legs were up on it, body coming down. And
16 the rest of him, you know, the box spring and mattress, so his
17 back and -- was laying on the ground with his feet up at a 90,
18 up on the bed. Head in the corner of the room.

19 And so when I went over there I realized, you know, I
20 didn't want to -- you know, put my hands near everything that
21 was on his upper half. So I went to grab his arm, as the next
22 best place to check vitals is the wrist, as far as I know.

23 And so I picked up his arm. And when I picked up his
24 arm, the -- I don't know what it was, puke, or what -- white
25 stuff around his mouth kind of bubbled.

Kilty - D

1 And I thought that was a response to my touch. At
2 that point I didn't need to get vitals. I -- at that point I
3 was going to start doing CPR.

4 And so I kind of shifted his body off the bed, the
5 way that it was. And doing so, his feet and legs and
6 everything stayed as they were, up in the air, without being
7 supported by the bed anymore.

8 And being a hunter and outdoorsman, I know what rigor
9 mortis is and I know what a body that's been dead for a while
10 looks like. And --

11 Q. How did it feel when you touched his -- I think you said
12 his wrist, to check for vitals. What did his body feel like?

13 A. In hindsight, it didn't -- in hindsight, you know, if it
14 wasn't personal, I would have known right away because it was
15 cold and it didn't feel right. But I was in -- I was in a -- I
16 don't know, I wasn't able to see past that. I was -- I had
17 more hope in me than I did reality at that point, I guess. I
18 was hopeful that what I felt from his cold skin and stuff
19 wasn't what it actually meant.

20 Q. Were you scared?

21 A. At the time I don't remember being scared, no.

22 I remember wanting to help, wanting reality not to be
23 reality.

24 Q. So what did you do to try to help?

25 A. Well, as soon as I positioned him off the bed and realized

Kilty - D

1 that he -- not only was he dead, but he had been dead for a
2 while, I just exited the room. Went and got my phone from my
3 room, which is the next room down. Just called 9-1-1 as
4 quickly as I could.

5 Q. And did you stay at your house while you waited for 9-1-1?

6 A. I did.

7 Q. Okay. So let's rewind. Let's talk about the night before
8 this.

9 Do you remember that night?

10 A. I do.

11 Q. Was that Friday?

12 A. It was Friday evening, yeah.

13 Q. Did you see Mr. Delong on Friday night?

14 A. I did.

15 Q. Tell us about that.

16 A. I had received a text from him. I had worked later. It
17 was one of the rare days that he -- I didn't need a ground guy
18 for the day. And he had worked with somebody else and gotten a
19 ride home from somebody else.

20 And he texted me, I don't know, maybe between 3:00
21 and 5:00 p.m., letting me know that he was home. Because
22 normally I would wait for him or he would wait for me at the
23 office, to give him a ride home.

24 So I saw him once I got home, I believe about 7:00 or
25 8:00, and asked him if he wanted to go to my dad's house with

Kilty - D

1 me. Which he usually did want to go.

2 And he said he wanted to stay and watch a series --
3 TV series, *House of Cards*, that I had on my computer, that I
4 wasn't very fond of, but he liked quite a bit. And so it kind
5 of made sense, you know, if I wasn't there, for him to stay
6 there and watch it. And I didn't think much of it.

7 Q. Did you notice anything unusual about Mr. Delong in this
8 interaction?

9 A. No, I really didn't. (Shakes head.)

10 Q. Did you see any signs of drug paraphernalia?

11 And by that I mean did you see any syringes?

12 A. Nope.

13 Q. Any spoons?

14 A. I didn't even see them on the bed when I went in the next
15 morning and found him. It was all right there. I didn't even
16 see it then.

17 Q. But when you left on Friday night, did you see any drug
18 use?

19 A. Not at all.

20 Q. Do you know if Mr. Delong had a drug problem?

21 A. I knew that he did, yeah, from what he had said and what
22 other people have said. I've never seen him use or anything,
23 but heard.

24 Q. And so during the approximately one year that you'd known
25 him, working together, was it a problem? His drug use?

Kilty - D

1 Did you ever see it?

2 A. I never saw it. Only problem I saw was, I suppose, the
3 aftermath of, you know, having an addiction. But I never saw
4 him use or have any withdrawals or anything from it.

5 Q. Okay. Did he appear to be clean?

6 A. Absolutely.

7 Q. Not on drugs?

8 A. Absolutely.

9 Q. Have you been around drug addicts in general?

10 A. I've been around some, yeah.

11 Q. Okay. Did you have the time -- the chance to observe drug
12 addicts?

13 A. Yes, I have.

14 Q. And in your time with drug addicts, have you observed
15 certain things about them, like missing work or being late?

16 A. Yes.

17 Q. Did you observe any of that with Mr. Delong in the year
18 that you knew him?

19 A. Not at all.

20 Q. So on that Friday night when you went to your dad's house,
21 how long were you gone?

22 A. I don't remember the exact times, but I believe -- I
23 guess -- I think I got off -- or got home about 7:00 or 8:00,
24 left there shortly after. So anywhere from 9:00 to probably
25 midnight or 1:00 in the morning is when I got back.

Kilty - X

1 Q. And when you got back to your home, did you see Mr. Delong?

2 A. I didn't. (Shakes head.)

3 Q. Do you know where he was?

4 A. I assumed he was in his room.

5 Q. Is the next time you saw Mr. Delong Saturday, when you went
6 into his room?

7 A. It is the next time I saw him.

8 MS. BOLSTAD: Okay. Nothing further on direct, your
9 Honor.

10 THE COURT: Thank you.

11 Mr. Andersen, any questions?

12 MR. ANDERSEN: Your Honor, I have no questions for
13 Mr. Kilty.

14 THE COURT: Okay. Mr. Sepp?

15 MR. SEPP: Thank you. Just a couple.

16 CROSS-EXAMINATION

17 BY MR. SEPP:

18 Q. During the six to eight months [sic] that you lived
19 together, is it possible that he could have been using drugs in
20 his room and you just didn't know?

21 A. I believe anything is possible, but I don't believe that to
22 be true at all.

23 Q. And you had testified that you had known him for nearly a
24 year, and then you moved in together about four months later.
25 Correct?

Kilty - X

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1 A. We had known each other about a year, total.

2 We had known each other probably six to eight months
3 before moving in together for six weeks, two months, something
4 like that.

5 Q. And did you give him rides home to the -- did you carpool
6 with him?

7 A. Yeah, I --

8 Q. I'm sorry, let me repeat that.

9 Did you carpool from him -- to and from work prior to
10 moving into the Blanton address?

11 A. Yes, every day since the first day I met him.

12 MR. SEPP: Nothing further. Thank you.

13 THE COURT: Any redirect?

14 MS. BOLSTAD: No, your Honor.

15 THE COURT: May the witness be excused?

16 Yes?

17 MR. SEPP: Yes, your Honor.

18 THE COURT: Thank you, sir. You're free to go.

19 THE WITNESS: Thank you.

20 THE COURT: Next witness, please.

21 MS. BOLSTAD: The Government calls Deputy Medical
22 Examiner Charles Lovato.

23 THE COURT: Thank you.

24 Doctor, would you come here, please, to the witness
25 chair. Please come all the way up to the witness chair.

Lovato - D

1 Thank you.

2 Face the jury and the deputy there. Raise your right
3 hand to be sworn.

4 (Witness sworn.)

5 THE WITNESS: I do.

6 THE CLERK: Please take a seat.

7 THE COURT: Bring yourself close in to the
8 microphone, please.

9 Tell us your full name, and spell it all.

10 THE WITNESS: Charles, C-H-A-R-L-E-S, James,
11 J-A-M-E-S, Lovato, L-O-V-A-T-O.

12 THE COURT: Thank you.

13 Counsel.

14 MS. BOLSTAD: Thank you, your Honor.

15 DIRECT EXAMINATION

16 BY MS. BOLSTAD:

17 Q. Good afternoon.

18 Would you please tell the jury how you are employed.

19 A. I'm a deputy medical examiner for Washington County.

20 Q. And what do you do as a deputy medical examiner?

21 A. I am a forensic death investigator. And what that means is
22 I receive all calls of deaths that occur in the county that
23 fall under the statute for the requirement to be -- for our
24 office to be notified. Then I go through a set of processes of
25 making a determination as to whether they fall under the

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1 guidelines where we will take jurisdiction.

2 And then at some point we respond to scenes to make
3 that decision. And if an autopsy is required, then I'll
4 coordinate with a forensic pathologist at the state office.

5 Q. And do you do that with the Washington County Sheriff's
6 Office?

7 A. No, the medical examiner's office.

8 Q. So how long have you been with the medical examiner's
9 office?

10 A. I've been with this medical examiner's office for 12 years,
11 I've been in the field for 26.

12 Q. Where were you before?

13 A. Snohomish County, Washington, and Larimer County, Colorado.

14 THE COURT: Doctor, would you move back a bit from
15 the microphone, and we won't get as much feedback. Thank you.

16 Go ahead.

17 MS. BOLSTAD: Thank you.

18 BY MS. BOLSTAD:

19 Q. Did you have to go through any special training to become a
20 deputy medical examiner?

21 A. Yes. When I was hired, the training at that time was -- I
22 went to the -- the University of St. Louis school of medicine
23 for both basic and advanced death investigation.

24 I also went through the -- it was called on-job
25 training, at that time. And I was required to study

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1 pharmacology, physiology, anatomy, clinical diagnosis and
2 management. And then I was required to follow cases and do the
3 autopsy work for 200 cases, and explain everything I was
4 learning and how it applied to each case. And also explain
5 what was occurring at scenes and how that fit with what I was
6 seeing anatomically at the autopsy.

7 Q. Were you working on March 29th, 2014?

8 A. Yes, I was.

9 Q. And did you respond to a scene of a death?

10 A. Yes, I did.

11 Q. What time did you receive the call?

12 A. I got the call at 1:00 -- 1:20 p.m.

13 Q. And what time did you arrive at the scene?

14 A. I believe it was 2:24, I believe.

15 Q. And then do you remember who was present when you did
16 arrive at that home?

17 A. What's that?

18 Q. Do you remember who was present? Who was there?

19 A. The people I saw was -- I met with Washington County Deputy
20 Cutler. And I believe, at least initially, Corporal Sanders
21 was there. And I believe the -- one of the roommates.

22 Q. Okay.

23 A. Mr. Kilty, I believe, was at the residence.

24 And also an aunt of the deceased was there.

25 Q. So without getting into what people told you -- we're not

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1 going to get into that.

2 A. Okay.

3 Q. Tell the jury what happened when you did arrive.

4 A. I was led back to the back bedroom where the deceased was
5 located.

6 Q. And what did you see?

7 A. I saw him, basically laying toward the back of the room, on
8 the -- it was a mattress that was on the floor.

9 And he was lying with his hips -- legs were on the
10 mattress, and his upper body was -- he was on his back, was
11 laying back down towards the floor. And his arms were kind of
12 back and up.

13 Q. Did you see any blood?

14 A. Yes. He was -- he was nude. He had a large amount of --
15 of blood that's kind of consistent with coughing blood.

16 It was a fairly large pattern. It covered his chest
17 and his face, and it -- there was some on the wall. It covered
18 his arms.

19 Q. Did you say coughing blood?

20 A. Yeah.

21 Q. What do you mean by that?

22 A. It's kind of a -- a spray-type blood.

23 What happens is when the body starts to -- to cease,
24 the lungs start to get irritated as they start cycling down.
25 And small capillaries, the pleural lining will break and leak

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1 blood into the bronchial airway, and that's where the blood
2 comes from.

3 And the reason why I say it's kind of like a cough
4 blood, it's -- it's blood that was a pattern that was kind of
5 consistent with somebody who might have convulsed or had, like,
6 a seizure right towards the end of death.

7 Q. Besides blood, did you see any other fluids coming out of
8 Mr. Delong?

9 A. Yes. There was a very large amount of a white frothy foam
10 that was in the mouth, coming from the mouth or from the nose.

11 Q. Did you touch the body and get a feel for it?

12 A. Yes.

13 Q. What did you observe?

14 A. He had rigor, which is a stiffening of the muscles that
15 starts to occur after death. And it usually takes about 16
16 hours in normal conditions for it to become completely stiff,
17 to where it's really hard to move any muscle at all.

18 His -- he did have some rigor in both the small and
19 the large muscles. When -- when I say that, I mean the neck,
20 the jaw, the fingers. And he also had it in the joints, but it
21 was fairly easy to move still, and was still advancing. It
22 wasn't fixed yet.

23 Q. And so was this body -- it's not yet in full rigor?

24 A. Correct.

25 Q. Okay.

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1 A. And then there was lividity, which is -- when the body
2 ceases to function, your circulatory system stops and all of
3 your blood in your body will start to pool down. It's called
4 dependent lividity because it depends on gravity.

5 And what happens is it starts to fill in the
6 capillaries of the skin that's closest down but not being
7 pressed on, and it changes it to a kind of a purple color.

8 And as that starts to occur, which is usually about
9 two hours when you will start to see the pattern start to
10 develop, it gets darker. And it also starts to fix. In
11 between 10 to 12 hours, the blood is congealing. And so what
12 happens is you press on it and it blanches; like if you press
13 your -- your hand and it turns white, that's -- you're pushing
14 the blood away from the capillaries, and then it fills back in.
15 And it happens pretty quickly like that in -- initially, in the
16 first couple of hours, couple or three hours.

17 And then, as time passes and it fixes, it will no
18 longer -- it gets slower at pushing away and slower at filling
19 back in. At about 12 hours it's -- you can't -- you can't move
20 it.

21 Q. And so with this body, where was the lividity?

22 A. It was towards his back because -- you know, based on his
23 position.

24 Q. Okay. And timing-wise, you said it sort of takes two or
25 three hours at the front end.

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1 How long does it --

2 A. Right.

3 Q. How long does it take to reach full lividity when a body --
4 when a person dies?

5 A. Well, we put the two together and my approximate --
6 approximate -- approximation at the time was about six to ten
7 hours.

8 Q. Six to ten hours that Mr. Delong had been dead?

9 A. Yes, um-hmm.

10 Q. What time were you making that observation on --

11 A. I was making that observation at -- I got at the scene at
12 2:34 p.m., and I was evaluating him shortly after that.

13 Q. So would you say between 2:30 and three o'clock?

14 A. Correct. Um-hmm.

15 Q. Did you observe any signs on the body of drug use?

16 A. What I did see on the -- the right arm, toward the side of
17 the elbow, were three or four healed -- looked like healed
18 abscesses. And then there was a couple more just little bit
19 lower, and those are fairly consistent with someone that's
20 using any type of an IV drug use or a needle.

21 Q. And you say an abscess. People don't necessarily know what
22 an abscess is.

23 Is it like a needle stick?

24 A. Well, a needle stick is -- the abscess itself is -- occurs
25 when you get an infection at a site where you've breached the

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1 skin and some bacteria or debris gets in, that the -- the body
2 wants to try and heal that, and you wind up building up pus.
3 You get an abscess that has a pussy discharge, fluid.

4 Once it goes through that -- that phase and it breaks
5 open, as it starts to heal -- because of the tissue underneath
6 that has been damaged and is lost, once it starts to heal, it
7 has that kind of a crater look to it.

8 And it's -- that's what I was seeing, was about three
9 or four of those, along here (indicating), and a couple down a
10 little bit lower.

11 Q. And when you say "here," what are you pointing at, for the
12 record?

13 A. For the record, this is the inside the elbow or the
14 antecubital fossa, as it's called.

15 Q. Okay. So it sounds like you saw some well-healed needle
16 marks.

17 Did you see any fresh needle marks?

18 A. I did not see any fresh needle marks.

19 Q. Let's -- I'm going to ask you about the scene.

20 So we've talked about the body.

21 Did you observe anything worth noting around
22 Mr. Delong's body?

23 A. Yes. He was toward the back end of the mattress, toward
24 the wall and in across the bed. So his torso or his upper body
25 was between the mattress and a entertainment -- entertainment

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1 center along the other side of the wall.

2 And on that entertainment center, on the bottom base
3 area, was a small metal cup almost like a little measuring-type
4 cup. And it had -- inside, it had some -- a brownish res --
5 residue type of a substance and also a piece of cotton ball
6 with -- that was brown. And on the bottom of that container
7 was black scorch marks, from being burned.

8 And that's -- this is something we see that's fairly
9 consistent with somebody that's using it as a cooker for
10 changing their -- their drug into a liquid form for IV use.

11 There was also on the bed, closest to the door, the
12 corner closest to the door, there was -- I believe it was a
13 shirt. And in that pile there, there was a balled-up Kleenex,
14 part of a cotton ball, two capped syringed -- needle syringes,
15 and two caps to a needle syringe. The needle end and the --
16 and the plunger end.

17 Q. I'm going to show you -- I'm sorry.

18 I'm going to show you what's marked as Government
19 Exhibit 2. It will come up on the screen in front of you,
20 there.

21 Do you recognize that?

22 A. Yes.

23 Q. Is that what you're describing?

24 A. Yes.

25 Q. And are the syringes -- point those out to the jury.

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1 A. That would be this -- can they see?

2 Q. You can touch the screen or you can just describe it.

3 A. Okay. Just by the -- by the butane lighter. If you move
4 up, there's one complete syringe.

5 And I'm -- in this picture I'm not seeing -- I see a
6 cap and a cap, and I'm not -- and the cotton ball, with some
7 money. I believe it was something like \$581 was actually in
8 that little -- that little pile there.

9 And I don't see the other syringe from this
10 particular picture.

11 Q. I'm going to show you Government Exhibit 3. It's been
12 marked and admitted.

13 Is this what you're talking about?

14 A. Yes.

15 Q. Okay. And do you see syringes in this photo?

16 A. Yes, I do.

17 That would be these -- just above the butane lighter.

18 Q. Did you observe a belt in the room?

19 A. Yes.

20 Q. Tell us about that.

21 A. It was a leather belt that was under the deceased's upper
22 body, on the floor. It was still in a loop.

23 And next to that, on the right side of his head, was
24 another uncapped syringe, needle syringe.

25 Q. Does a belt in a loop mean anything to you as a deputy

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1 medical examiner?

2 A. Frequently that's used to -- what they call tie off or to
3 close off the upper arm when they're going to inject.

4 Q. Okay. So I'll show you Government's 4.

5 Is this the belt you saw?

6 A. That's the belt.

7 Q. And finally, let's take a look at Government Exhibit 5.

8 And next, Government Exhibit 6.

9 Did you recognize this?

10 A. Yes.

11 Q. Tell us what this is.

12 A. This is a brown tarry substance that is -- looks consistent
13 with the heroin.

14 Q. Was that found near Mr. Delong?

15 A. Yes. It was found under his arm.

16 Q. And I would like to return to the needle mark question,
17 Dr. Lovato.

18 Do you have your report with you?

19 A. Yes, I do.

20 Q. Could you look at the bottom of the narrative portion, the
21 third paragraph from the bottom.

22 A. Um-hmm.

23 Q. And the final sentence there.

24 A. Yes.

25 Q. I'm going to ask you to read that to yourself.

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1 A. Yeah.

2 Q. And ask you, does that refresh your recollection about
3 seeing fresh needle marks?

4 A. Yes. It does.

5 Q. Okay.

6 A. On the back part of the elbow there was -- it looked like a
7 puncture or a partial puncture. It -- it didn't have the --
8 the classic, you know, straight point to it. And that's what
9 it appeared -- appeared like to me. It was very fine, but at
10 the same time it was a little irregular, from what I saw.

11 Q. And did that mark -- was it different than the healed marks
12 that you saw on other parts of his arm?

13 A. Yes, it was.

14 Q. Did you make a determination about what to do with
15 Mr. Delong's body?

16 A. Yes, it was determined to take him to the state for an
17 autopsy.

18 Q. Have you responded to other heroin overdoses?

19 A. Yes, I have.

20 Q. Do you send every body for an autopsy that you find?

21 A. We have in the past few years.

22 Not always. But sometimes if the needle is actually
23 in the arm and if there's not enough information at the time
24 where someone may be charged, and there's no charges pending,
25 then we may not. We'll just do a toxicology test.

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1 Q. So it depends on how -- perhaps how strong the case appears
2 from the get-go?

3 A. Correct. Plus, you know, if there's a suspect.

4 If -- if detectives are feeling like they -- they
5 don't have any information to go on at the time, then a
6 decision is made as to whether we feel like we need to do one
7 for our purposes or not.

8 Q. Okay. And in your experience at the medical examiner's
9 office, have you responded to more heroin overdoses or less in
10 these last five years of your career, than the first six at
11 this medical examiner's office?

12 MR. ANDERSEN: Your Honor, I object to that.

13 THE COURT: Sustained.

14 MS. BOLSTAD: Nothing further on direct.

15 THE COURT: Cross, Mr. Andersen.

16 MR. ANDERSEN: Thank you.

17 CROSS-EXAMINATION

18 BY MR. ANDERSEN:

19 Q. Am I understanding you right, that the puncture wound
20 that -- was on the back of the elbow?

21 A. I believe it was. Either that or a very small scratch. So
22 he's trying to -- it just wasn't -- it wasn't medical. I made
23 sure that -- that nobody from EMS had done anything to that.

24 Q. So when you say it was not medical, it was not performed by
25 a medical technician that had responded to the scene?

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1 A. Correct. Correct.

2 Q. Was that, in your opinion, the site of injection in this --

3 A. No, it was not.

4 Q. But you couldn't --

5 A. That was the -- that was the only thing I could decipher.

6 The classic places toward the front of the arm --

7 Q. Right.

8 A. -- were so covered with little specks of blood.

9 And these -- these needle punctures, IV needle
10 punctures are so fine that they look so much alike, and because
11 there was so much pattern -- I did not want to disturb the
12 pattern. It's better for that to be done at the autopsy suite,
13 and you can do cutdowns and look and see what -- you know,
14 after you clean everything, you can look and see what you can
15 see.

16 MR. ANDERSEN: Okay. That's all I have.

17 THE COURT: Mr. Sepp?

18 MR. SEPP: No questions.

19 THE COURT: Any redirect?

20 MS. BOLSTAD: No, thank you.

21 THE COURT: Thank you, Doctor. You're free to go.

22 Next witness, please.

23 MS. BOLSTAD: The Government calls Sara Short, from
24 the Oregon State Police crime lab.

25 THE COURT: Ms. Short, would you come all the way to

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1 the witness chair, please. Please come all the way up.

2 Thank you.

3 Remain standing. Face the jury and the deputy. And
4 raise your right hand to be sworn, please.

5 (Witness sworn.)

6 THE WITNESS: I do.

7 THE CLERK: Please take a seat.

8 THE COURT: Bring yourself close around to the
9 microphone, please.

10 Tell us your full name, and spell it all.

11 THE WITNESS: My name is Sarah Short.

12 First name S-A-R-A. Last name S-H-O-R-T.

13 THE COURT: Thank you.

14 DIRECT EXAMINATION

15 BY MS. GOLOBORODKO:

16 Q. Good afternoon. Could you please tell the Court how you're
17 employed.

18 A. I am employed as a forensic scientist in the toxicology
19 section of the Oregon State Police forensic lab in Clackamas.

20 Q. And how long have you worked for the Oregon State Police
21 forensic lab?

22 A. Since August of 2006.

23 Q. And can you tell us about your education.

24 A. I have a bachelor's degree in biomedical sciences from the
25 State University of New York at Buffalo, and I have a master's

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1 degree in forensic science from Marshall University.

2 Q. And what did you do prior to this job?

3 A. Prior to starting my employment with OSP in 2006, I worked
4 for the Westchester County Medical Examiner's Office in
5 Valhalla, New York. I was a forensic toxicologist there for
6 two years.

7 Q. Now, you said that you're a forensic toxicologist. Is that
8 your area of focus or specialty?

9 A. Yes.

10 Q. And do you go through annual proficiency exam --
11 examinations at OSP?

12 A. Yes, I do.

13 Q. Now, while at OSP, can you estimate how many fluid analyses
14 you've done?

15 A. Probably between 2- and 3,000 analyses.

16 Q. And have you ever been called to testify in court about
17 your laboratory findings on prior occasions?

18 A. Yes, I have.

19 Q. Now, can you explain to the jury, step-by-step, what is
20 typically involved when you receive fluids to test in the lab.

21 A. When I initially receive the samples, these can be any type
22 of biological samples. Typically they're blood; urine; or
23 vitreous humor, which is the fluid from the eye.

24 The first step in my analysis is screening, and
25 that's just a presumptive positive or negative for various

1 categories of drugs. So after I do that test, I'll have a
2 positive or negative result for general drug categories like
3 opiates, amphetamines, or benzodiazepines.

4 After that screening test, I do a more confirmatory
5 test called GC/MS, or gas chromatograph/mass spectrometer. And
6 that is the standard of identification of drugs in the field of
7 forensic toxicology. And that test identifies any drugs that
8 were positive by the screening test, and it also detects drugs
9 that aren't detected by the screening test. Things like
10 over-the-counter medications, some prescription medications.

11 And then, if it's a blood sample, I take it a step
12 further and quantitate any drugs that I detected in that
13 confirmatory test.

14 Q. You said quantitate. What is the difference between
15 quantitative and qualitative?

16 A. A qualitative test is just an identification of a drug,
17 whether it's present or not present.

18 A quantitative test takes that one step further, past
19 identification, and assigns a value to how much of that drug is
20 present.

21 Q. All right. Now I want to talk about the urine testing.

22 Did you analyze a urine sample taken from
23 Mr. Delong's body?

24 A. Yes, I did.

25 Q. Now, why did the lab test his urine?

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1 A. The biological samples are submitted by the medical
2 examiner. So in this case they requested toxicology --
3 toxicological testing on these samples.

4 Q. And what do you normally look for in your tests?

5 A. The lab's testing is designed to be comprehensive and
6 broad, to detect as many drugs as possible. So it's not a
7 targeted analysis. It's that screening and then broad
8 confirmatory approach to detecting drugs.

9 Q. And why does the lab do this?

10 A. It's the standard of testing in the field of forensic
11 toxicology, is screening and then confirmatory-type tests.

12 Q. Now, I'm going to show you an exhibit which is marked
13 Government's Exhibit 11.

14 THE COURT: This has been previously admitted?

15 MS. GOLOBORODKO: No, your Honor. It's just for
16 the --

17 THE COURT: Then it should not be on your screens.

18 You'll show -- you'll get it when it's received.

19 All right. Go ahead, Counsel.

20 BY MS. GOLOBORODKO:

21 Q. Do you recognize this document?

22 A. Yes.

23 Q. And what is it?

24 A. This is the analytical report that I prepared after the
25 completion of my analysis of these samples.

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1 Q. Does this document describe what you tested?

2 A. This document describes that I tested the urine sample.

3 Q. Does it accurately document your findings?

4 A. Yes, it does.

5 Q. And is that your signature on the bottom?

6 A. Yes.

7 MS. GOLOBORODKO: I would like to offer Government's
8 Exhibit 11 into evidence.

9 MR. ANDERSEN: I have no objection.

10 MR. SEPP: No objection.

11 THE COURT: It's received. It may be published.

12 Please continue.

13 BY MS. GOLOBORODKO:

14 Q. Now, did you analyze this specimen in the way that you
15 described; presumptive testing, followed by more specific
16 tests?

17 A. Yes, I did.

18 Q. And what did you find?

19 A. I confirmed the presence of codeine, 6-monoacetylmorphine,
20 and heroin in the urine sample. And my examination indicated
21 the presence of morphine.

22 Q. Now, I guess, what does that mean?

23 Can you tell us what codeine, 6-monoacetylmorphine --
24 what all of those are?

25 A. I'll start with heroin. That is the parent drug or the

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1 drug that is ingested or consumed by an individual.

2 6-monoacetylmorphine is its unique metabolite. So if
3 6-monoacetylmorphine is detected in someone's urine, that means
4 that it came from heroin.

5 Codeine is most likely an impurity found in the
6 manufacture of heroin that's also present in the urine of
7 heroin users, and my examination indicated the presence of
8 morphine.

9 This means that -- we have strict confirmation
10 criteria before I can report a drug as being confirmed in
11 urine -- in a sample. And the morphine in this case did -- did
12 not meet one of those criteria, but there was strong evidence
13 that it was present. And the procedures allow for reporting a
14 drug as indicated in those circumstances.

15 Q. Have -- now, there's morphine in there. I guess, what is
16 morphine in the urine?

17 A. Morphine is a narcotic analgesic. It's an opiate. It can
18 be taken on its own. And it's also a metabolite of heroin.

19 Q. So what does that mean, a metabolite of heroin?

20 A. Heroin breaks down very quickly in the body. It's
21 metabolized very quickly. That's what metabolism means; it's
22 just a breakdown process that the body does naturally.

23 Heroin's metabolic pathway, after it's in the
24 bloodstream, heroin metabolizes to 6-monoacetylmorphine first,
25 and then morphine. That's the metabolic pathway, the way the

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1 body breaks it down to get it out.

2 Q. Now, you just mentioned that you have very specific
3 confirmation requirements. I guess, what -- what does that
4 mean?

5 A. Some of the confirmation requirements require I have a
6 positive screening test for opiates, and I did in this case.

7 Then I have drugs detected by GC/MS, which I did in
8 this case.

9 And that they -- those drugs have a retention time
10 within 1 percent of the retention time of a reference standard
11 that's also analyzed within seven days of this sample.

12 Additionally, it has to have a spectral match. Each
13 drug has a unique fingerprint. After it's analyzed by GC/MS,
14 it has to match well to the reference standard.

15 Q. So now I want to move on to the blood test information.

16 Did the lab also test a sample of Mr. Delong's blood?

17 A. Yes.

18 Q. And why did the lab test his blood?

19 A. That was also requested by the medical examiner's office.

20 Q. Now, I'm going to show you -- again, just you, what's been
21 marked as Government's Exhibit 12.

22 Do you recognize this document?

23 A. Yes.

24 Q. And what is it?

25 A. It is the analytical report that I wrote after the

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1 completion of my analysis of the blood.

2 Q. And does this document describe what was tested?

3 A. Yes.

4 Q. And does it accurately document your findings?

5 A. Yes.

6 Q. And is that your signature on the bottom of the document?

7 A. Yes, it is.

8 MS. GOLOBORODKO: I would like to offer Government's
9 Exhibit 12 into evidence.

10 THE COURT: Any objection, Counsel?

11 MR. ANDERSEN: No.

12 THE COURT: Mr. Sepp?

13 MR. SEPP: Oh, no, your Honor.

14 THE COURT: All right. It's received.

15 Please publish.

16 Continue, Counsel.

17 BY MS. GOLOBORODKO:

18 Q. So, now, you mentioned that the test did -- or the lab ran
19 tests of Mr. Delong's blood.

20 What tests were run?

21 A. As I described earlier, on this sample I performed a
22 screening test, that initial presumptive test for general
23 categories of drugs; a confirmatory test by GC/MS; and then
24 also a quantitative test by LC/MS/MS.

25 Q. Now, what do you normally look for in blood tests?

1 A. The toxicology testing for blood samples is similar to the
2 one for urine. It's broad-based and comprehensive to detect as
3 many drugs as possible.

4 Q. And in this case, was anything found in Mr. Delong's blood?

5 A. Yes.

6 Q. What was found?

7 A. My examination confirmed the presence of morphine free at
8 0.085 milligrams per liter, plus or minus 0.014 milligrams per
9 liter; and morphine-glucuronide bound at greater than .8
10 milligrams per liter.

11 Q. Now, what is morphine free and morphine-glucuronide bound?

12 A. Morphine free is the parent drug morphine. It can either
13 be -- again, it's taken on its own as morphine or it can be a
14 metabolite of heroin.

15 Morphine-glucuronide is morphine's metabolite. It
16 just has a sugar molecule, a glucuronide molecule, attached to
17 it to help make it more water soluble to get out of the body.

18 Q. Now, did you find anything else in his blood?

19 A. No. The alcohol volatiles analysis for ethanol or alcohol
20 was 00, and acetone was also not detected.

21 Q. Did you find any other drugs?

22 A. No, I did not.

23 Q. Now, the finding of morphine here, is this a confirmed
24 result?

25 A. Yes, it is.

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1 Q. Okay. Now, when you find these markers in a person's
2 blood, what does it tell you?

3 A. From just the blood report alone, I can't tell if the
4 person ingested, consumed, or used morphine or heroin. But it
5 indicates that there is morphine in the blood and -- as well as
6 morphine metabolite, that morphine-glucuronide in the blood
7 sample.

8 Q. Now, looking at both the urine and blood tests, did the lab
9 find any other chemicals or controlled substances in either
10 fluid?

11 A. No.

12 Q. And based on these results from both the blood and urine
13 testing, what is the big picture?

14 A. The analysis of the blood and urine together indicate to me
15 that at some point recently this person used heroin.

16 MS. GOLOBORODKO: That's all the questions I have on
17 direct.

18 THE COURT: Mr. Andersen, any questions?

19 MR. ANDERSEN: Yes, thank you.

20 CROSS-EXAMINATION

21 BY MR. ANDERSEN:

22 Q. Now, you said -- if I'm understanding you right, you were
23 talking about, for example, the morphine free and the
24 morphine-glucuronide bound indicates it could be heroin or
25 morphine. Is that true?

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1 A. From the blood report alone, yes.

2 Q. All right. So from the blood report, at least, you
3 couldn't tell what -- what it was that -- that came into the --
4 the bloodstream in the first place?

5 Is that true; you can just tell what the metabolites
6 are?

7 A. From the blood report alone, if the blood report was
8 standing alone and I did not have a urine sample, I would not
9 be able to determine if this person used morphine or heroin or
10 both.

11 Q. So that's what the urine sample -- does that tell you it's
12 heroin?

13 Or how -- how do you determine if it's heroin?

14 A. The urine sample not only contains heroin, which is not
15 frequently detected in our cases, but also contains
16 6-monoacetylmorphine, which is a unique metabolite of heroin.

17 And so that information, coupled with the morphine in
18 the blood, says to me, as a toxicologist, that this person used
19 heroin.

20 Q. Now, does that tell you any -- any information about the
21 type of heroin or -- or where that heroin could have come from
22 or anything about the -- the heroin itself?

23 A. No, it does not.

24 Q. Now, can you -- I don't know if you have a copy of that.

25 Maybe we could pull up just the -- the -- your --

Short - X

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1 which I believe that's --

2 THE COURT: 11.

3 MR. ANDERSEN: 11. Thank you, your Honor.

4 BY MR. ANDERSEN:

5 Q. Can you -- when was this testing performed, if you could
6 look up at the top there?

7 A. My analytical report was issued May 26th of 2014.

8 Q. So that's about two weeks -- or, I'm sorry, two months
9 after it was collected. Is that true?

10 A. I would have to refer to my notes to look about -- to see
11 when it was collected.

12 Q. I -- I think we can -- if you look just below there, right
13 above the analytical report, it says at least the date of --
14 of his decease.

15 Is that --

16 MR. ANDERSEN: Thanks for following along with me.

17 BY MR. ANDERSEN:

18 Q. Is that date -- does that date, there, tell you any time
19 when you would assume it would have been collected?

20 A. Yes. It's usually very close to the date of death that
21 it's been drawn, yes.

22 Q. Date of death.

23 Is that a normal time frame, to have two months
24 between the collection and the testing?

25 A. It's not an untypical time frame.

Short - ReD

1 I could look more closely at my notes to see exactly
2 when I analyzed it because there is time between my analysis
3 and when I actually write my report.

4 Q. Okay. I don't think that's necessary.

5 MR. ANDERSEN: I don't have any further questions.

6 THE COURT: Thank you.

7 Mr. Sepp, any questions?

8 MR. SEPP: Nothing, your Honor.

9 THE COURT: May the witness be excused?

10 MS. GOLOBORODKO: I have one more question on
11 redirect.

12 THE COURT: Go ahead.

13 REDIRECT EXAMINATION

14 BY MS. GOLOBORODKO:

15 Q. Now, if you need to look at your notes to refresh your
16 memory, you may.

17 When did you analyze these samples?

18 And please read the notes to yourself. And then,
19 once your memory is refreshed, you can let us know.

20 A. I will have to refer to my notes for those dates.

21 (Pause, referring.)

22 THE WITNESS: I started the analysis on May 5th,
23 2014. So my screening test was on May 6th of 2014, with
24 confirmatory testing on May 12th, 2014.

25 BY MS. GOLOBORODKO:

Short - ReD

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1 Q. Now, is there anything about the delay that would impact
2 your testing?

3 A. No.

4 MS. GOLOBORODKO: No further questions, your Honor.

5 THE COURT: May the witness be excused? Yes?

6 MR. ANDERSEN: Yes.

7 MR. SEPP: Yes, your Honor.

8 THE COURT: All right. Thank you, Ms. Short. You're
9 free to go.

10 THE WITNESS: Thank you.

11 THE COURT: How long for the next witness?

12 MS. BOLSTAD: I think 15 minutes, your Honor, we
13 could get it done.

14 THE COURT: Jurors? Yes?

15 Okay. Let's get it done.

16 MS. BOLSTAD: The Government calls Tim Goshorn.

17 THE COURT: The more we get done today. Thank you.
18 Appreciate it, jurors.

19 And then we'll call it a day, after this witness.

20 Sir, please come to the witness chair. All the way
21 up, and remain standing.

22 Please face the jury and the deputy there. Raise
23 your right hand to be sworn.

24 (Witness sworn.)

25 THE WITNESS: I do.

Goshorn - D

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1 THE CLERK: Please take a seat.

2 THE COURT: Bring yourself close in to the
3 microphone.

4 Now tell us your full name, and spell it all.

5 THE WITNESS: Timothy Oran Goshorn.

6 T-I-M-O-T-H-Y, O-R-A-N, G-O-S-H-O-R-N.

7 THE COURT: Need you to slow down just a bit when you
8 speak.

9 Counsel.

10 DIRECT EXAMINATION

11 BY MS. BOLSTAD:

12 Q. Good afternoon, Mr. Goshorn.

13 A. Good afternoon.

14 Q. Could you tell the grand -- I'm sorry. Could you tell the
15 jury, how old are you?

16 A. 28.

17 Q. Okay. Were you present when the police showed up at
18 Mr. Rosa and your apartment?

19 A. Yes.

20 Q. Okay. Was that back in March 2014?

21 A. Yes.

22 Q. Did you live there?

23 A. Yes.

24 Q. How long had you lived there?

25 A. Six months, I think.

Goshorn - D

1 Q. Who else lived there?

2 A. Morgan Godvin.

3 Q. At that time, in March 2014, did you use heroin?

4 A. Yes.

5 Q. Do you use heroin now?

6 A. No.

7 Q. When did you start using heroin?

8 A. When I was 19.

9 Q. And how old were you back in March 2014?

10 So last year?

11 A. 27, 26.

12 Q. Okay. So did you use heroin about seven years?

13 A. Yeah.

14 Q. Do you know anyone who has died from heroin?

15 A. Many people.

16 Q. Did you know Justin Delong?

17 A. I did.

18 Q. How did you know Mr. Delong?

19 A. I met him through Morgan a year before he passed away, and
20 he stayed at my house for a couple months. Lived with me, him
21 and his girlfriend. And -- yeah.

22 But we lost contact after he -- he sold heroin to my
23 brother, and he passed away.

24 Q. Your brother passed away?

25 A. Yes, from an overdose.

Goshorn - D

1 Q. Overdosing on heroin that Justin Delong had sold him?

2 A. Yes.

3 Q. Okay.

4 A. So we kind of didn't talk after that.

5 Q. Okay. How many siblings do you have?

6 A. There are six of us.

7 Q. And so in your seven years of using heroin, did you ever
8 have any close calls with overdose?

9 A. Once or twice.

10 Q. Okay. So had you ever tried to get off of heroin before
11 this year of sobriety?

12 A. Yes.

13 Q. Tell the jury about that. What does that feel like?

14 A. The actual physical feeling of it?

15 Q. Of trying to get off heroin.

16 A. It's un -- undescrivable. It's like the flu, the worst flu
17 ever, with thousands of paper cuts all over your body. Not
18 being able to stop moving. Throwing up, stuff coming out of
19 every orifice. Like just -- it's miserable.

20 Q. Does that last a short period of time or a long period of
21 time?

22 A. Two weeks, three weeks. Then no sleeping for months.

23 Q. Is there anything that makes you feel better when you're
24 experiencing those symptoms?

25 A. Opiates or benzos.

Goshorn - D

1 Q. So the thing you're trying to get off of is the thing that
2 can make you feel better?

3 A. Um-hmm.

4 Q. Do you remember the day when the police showed up in late
5 March?

6 A. Yes, I do.

7 Q. Do you have a clear memory of that day or does it stand out
8 in your mind?

9 A. It stands out.

10 Q. Why?

11 A. I don't know. It was very dramatic. It was three years
12 and a day to the day my brother died. Life was hectic. Just a
13 crazy time.

14 Q. But you were using at the time?

15 A. Um-hmm.

16 Q. When you're using heroin, my question is this: Are you
17 able to perceive what's going on around you --

18 A. Yeah.

19 Q. -- or are you out of it?

20 A. No, it's not like people think it is. It's -- you're not
21 just a zombie. Like -- I know plenty of people that hold jobs
22 and have families that, you know, go for a long time with no
23 one ever knowing.

24 Q. So you're able to function?

25 A. Um-hmm.

Goshorn - D

1 Q. And were you in fact able to function?

2 A. At the time, I would say so.

3 Q. Mr. Goshorn, did you distribute heroin also?

4 A. Yes.

5 Q. And did you tell the police about that when they arrived?

6 A. Um-hmm.

7 THE COURT: Sir, would you please say yes or no
8 instead of um-hmm, or --

9 THE WITNESS: Yes, yes.

10 They had my phone, so there was no denying --

11 BY MS. BOLSTAD:

12 Q. Okay.

13 A. -- anything.

14 Q. When they arrived, did you have any involvement in dealing
15 heroin to Ms. Godvin, what the police were there to talk about?

16 A. No.

17 Q. Do you know Michael Rosa?

18 A. Yes.

19 Q. Was he living with you at the time?

20 A. Yes.

21 Q. How long had he been there?

22 A. A month.

23 Q. And did you work with Mr. Rosa to sell drugs?

24 A. Yes.

25 Q. What was your role?

Goshorn - D

1 A. He was my best friend. And I guess I just helped him,
2 like give him a break. And he would -- we would just -- I
3 would get my share of money and drugs and --

4 Q. And so the jury might not be familiar with how it works.
5 When you say you helped him, walk us through that.

6 Would Mr. Rosa give you heroin to just go do whatever
7 you wanted with?

8 A. A big part of it was that he could trust me. And we were
9 dealing with thousands and thousands of dollars a day, so just
10 the fact that there was someone else that -- people who want to
11 buy drugs, time doesn't matter. They'll call you at 8:00 in
12 the morning or call you at 4:00 in the morning, and all day,
13 all hours, between. So him trying to do it, he -- you know, he
14 wanted money. There was a lot of money to be made. So he
15 would work so much he couldn't handle it. So I was the only
16 person he trusted, so I would take it and sell it.

17 Q. Would you do what he told you?

18 A. He was like my boss, yeah.

19 Q. Okay. And so, for example, would you go deliver drugs to
20 customers?

21 A. Um-hmm.

22 THE COURT: Please say yes or no.

23 THE WITNESS: Yes.

24 THE COURT: Thank you.

25 BY MS. BOLSTAD:

Goshorn - D

1 Q. But just to go back a step, about Morgan Godvin, when the
2 police arrive, had you delivered heroin to Morgan Godvin?

3 Had you given her that heroin?

4 A. No.

5 Q. Okay. And had you given any heroin in late March to
6 Mr. Delong?

7 A. No.

8 Q. Were you present when Mr. Delong came over?

9 A. They did not tell me because of the history. They -- it
10 was my house, and they knew I wouldn't want him in my house.

11 Q. So did you even know he was there?

12 A. Nope. I thought he was in jail. That was my
13 understanding.

14 Q. When you found out that Mr. Delong had died, how did you
15 feel?

16 A. It was so many emotions. Figuring out what day it was,
17 three years and a day after my brother died from the drugs
18 Justin had given him. And then my roommate gave him -- I don't
19 know. It was very emotional.

20 And I feel for anyone, you know, that -- he has a
21 family. And I know what my family went through, and it's just
22 sad.

23 Q. When you were working with Mr. Rosa to deliver heroin, do
24 you know where Mr. Rosa got his heroin?

25 Where did he get it from?

Goshorn - X

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1 A. Multiple people.

2 Q. Okay. In this late March time frame -- so the very
3 specific period of time, do you remember who he was getting
4 heroin from?

5 A. Yeah. I knew a name, yes.

6 Q. What is the name?

7 A. Shane.

8 Q. Okay. And had you ever gone directly to Shane, sort of
9 around Mr. Rosa?

10 A. Not with Rosa. One time when Mike was out of town.

11 Q. Tell us about that.

12 A. I -- Mike just told me to take the money to Elmer's on 92nd
13 at a certain time. So I went there, didn't even talk to him.
14 Just gave him money, he gave me a bag, and I left.

15 Q. And who's the him? Is that --

16 A. Shane, I believe.

17 Q. And is this the late -- or March 2014 time period?

18 A. Maybe two months before.

19 MS. BOLSTAD: Okay. Nothing further on direct, your
20 Honor.

21 THE COURT: Mr. Andersen.

22 MR. ANDERSEN: Thank you, your Honor.

23 CROSS-EXAMINATION

24 BY MR. ANDERSEN:

25 Q. Now, when you say multiple people, are you talking over the

Goshorn - X

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1 life of --

2 A. Over the two years, yeah.

3 Q. So was it not uncommon for him to have multiple sources at
4 one time?

5 THE COURT: Him, who?

6 MR. ANDERSEN: I'm sorry.

7 BY MR. ANDERSEN:

8 Q. For Mr. Rosa, to your knowledge, to have --

9 A. It would be -- it would be solid for, you know, a certain
10 amount of time, six months or so. And then someone would fall
11 off, get arrested and disappear, you know. Move on to the next
12 person. There would be a couple weeks or so of trying to find
13 someone.

14 So dealing with a larger amount, it's harder to find
15 people that deal with it, so --

16 Q. Well, now, did you -- did you call the police on Mr. Rosa
17 at any time before this -- the police came and talked with you?

18 A. I did not call the police on Mike. I told my parents what
19 was going on because I so badly wanted to get out of the mess
20 that I had got myself into.

21 And I gave my parents some information. And they --
22 I don't know what they actually ended up doing with it because
23 nothing happened. So --

24 Q. So what was the information you gave to your parents?

25 A. That Mike was going to get drugs from Ohio.

Goshorn - X

1 Q. And did you see him come -- after he came back from -- from
2 Ohio with drugs?

3 A. Um-hmm. Um-hmm.

4 THE COURT: Please say yes or --

5 THE WITNESS: Yes.

6 THE COURT: Thank you.

7 BY MR. ANDERSEN:

8 Q. And that was, what? A week or two weeks before you got
9 arrested? Is that accurate?

10 Or, I'm sorry, before the police came and talked to
11 you?

12 A. Two, three weeks, yeah.

13 Q. Okay. Now, after the police came and talked with you, did
14 you and Mike continue to sell heroin?

15 A. After we got busted?

16 Q. After you got busted?

17 A. Yes.

18 MR. ANDERSEN: Okay. That's all the questions I
19 have. Thank you.

20 THE COURT: Mr. Sepp.

21 MR. SEPP: Just a couple.

22 CROSS-EXAMINATION

23 BY MR. SEPP:

24 Q. Did you see the heroin that Mr. Rosa brought back from
25 Ohio?

Goshorn - ReD

1 A. Um-hmm.

2 THE COURT: Please say yes or no.

3 THE WITNESS: Yes.

4 BY MR. SEPP:

5 Q. How much was it, do you know?

6 A. A half ounce. And it was white powder.

7 Q. And how often did he go to Ohio during the time frame
8 January to March?

9 A. A couple times, but just for vacations, to see family and
10 stuff. It was the only time he brought anything back.

11 MR. SEPP: That's all. Thank you.

12 THE COURT: Redirect.

13 MS. BOLSTAD: Briefly.

14 REDIRECT EXAMINATION

15 BY MS. BOLSTAD:

16 Q. Mr. Goshorn, you mentioned the white material he brought
17 back from Ohio. I missed it; how much did he bring back?

18 A. Half ounce.

19 Q. A half ounce. Is that about -- what?

20 How many grams is that?

21 A. Uh -- (Pause.) 7 grams.

22 Q. Is that your memory of it or --

23 A. Okay. So a ball is -- no. 14. 12 to 14, in between
24 there. That's what it is.

25 Q. Okay. Did you have a chance to try what he brought back

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1 from Ohio?

2 A. Yes.

3 Q. What did you think of that white stuff?

4 A. Overrated.

5 Q. Overrated?

6 A. Um-hmm.

7 Q. What do you mean?

8 A. He paid more per half ounce than 1 ounce would cost in
9 Oregon. And it was supposed to be -- we were charging, like,
10 five times the amount. And it wasn't worth it. It wasn't --
11 it wasn't equivalent.

12 Q. Okay. And you're talking about product quality, right?

13 A. Um-hmm.

14 Q. What was a better hit, your Oregon heroin or the white
15 stuff from Ohio?

16 A. Oregon.

17 Q. Okay. Is that a stronger hit?

18 A. Um-hmm.

19 Q. Was it a cheaper hit from Oregon?

20 A. Um-hmm.

21 Yes. Yes.

22 MS. BOLSTAD: Nothing further.

23 THE COURT: May the witness be excused?

24 MR. SEPP: Yes.

25 MR. ANDERSEN: Yes. Thank you.

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1 THE COURT: Thank you, sir. You're free to go.

2 THE WITNESS: Thank you.

3 THE COURT: As are you, ladies and gentlemen.

4 Let me just remind you, do not talk about the case.
5 Your family, your friends are going to want to know how you
6 spent the day. You tell them you've been involved in a
7 criminal case. The judge has ordered you not to talk about it
8 and to wait until the end, and just keep repeating that. All
9 right?

10 No Internet work about the case, no blogging, no
11 Facebook, no -- no nothing about the case or anything that it
12 involves. This is really important.

13 That said, I want you to please leave your notes on
14 the chair, and just leave the case behind for today. It's been
15 a long day of tough subjects. Enjoy your evening.

16 Tomorrow, the door to the court -- to the jury room
17 will be available for you to ring the bell by eight o'clock.
18 You can come in as early as 8:00. We'll bring you into the
19 courtroom at 9:00.

20 I'll see if I can pick up some treats on the way, to
21 help make the morning wait a little better.

22 Feel free to bring your coffee or beverage or
23 something that you would like to have in the courtroom to help
24 keep you alert and focused. If you want to do that, you
25 certainly may.

1 Do any of you have questions for tonight?

2 Okay. So we'll start with you at nine o'clock
3 tomorrow. We'll take a break about 10:15, 10:30; 15 minutes or
4 so. We'll take a lunch break around noon, about an hour,
5 another break in the midafternoon. And then tomorrow evening,
6 hopefully 4:30, 4:45ish, we'll recess.

7 Thank you, ladies and gentlemen, for your work and
8 attention today.

9 Please rise for the jury.

10 (Jurors exit, 4:57 p.m.)

11 THE COURT: Watch your step.

12 Thank you, everyone. Please be seated.

13 So, Ms. Bolstad, for tomorrow, who's up first?

14 MS. BOLSTAD: I think we'll start with the medical
15 examiner, Dr. Lewman.

16 Then I would like to go with Detective Andersen,
17 followed by Morgan Godvin, Michael Rosa, and Shane Baker.

18 THE COURT: That should get us through the morning --

19 MS. BOLSTAD: Certainly.

20 THE COURT: -- at least.

21 Any matters for the Court, from the Government?

22 MS. BOLSTAD: I have a -- a question, your Honor.

23 THE COURT: Yes, ma'am.

24 MS. BOLSTAD: We have three stipulations in this
25 case.

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1 THE COURT: Um-hmm.

2 MS. BOLSTAD: I don't know what your preference is on
3 an appropriate time to read them into the record or if I should
4 do that through a witness.

5 THE COURT: Whatever works for you. I don't care.
6 If you want to read it and stage the stipulation at a time that
7 is logical in the evidence, that's fine. If you want me to
8 read it at the beginning of a session, that's fine, too.

9 However you wish.

10 MS. BOLSTAD: And so if I request you to read it,
11 I'll just make sure you have it available.

12 THE COURT: Yes.

13 MS. BOLSTAD: Okay. Thank you.

14 THE COURT: I have for you a draft No. 3 of jury
15 instructions and separate verdict forms for each defendant.

16 Please review them very carefully tonight, even for
17 typographical issues because, as you know, I've been doing a
18 lot of the writing, and it's not my expertise.

19 But I want to be sure you have a chance to work
20 through this on the versions I have. So I'm not sending them
21 electronically, it's just a paper copy.

22 Tomorrow morning, if -- if you can, I would like to
23 take up concerns you have about the adequacy of these as a
24 statement of the law, and sufficient to take care of the
25 theories defendants may have that they want to be sure I

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1 instruct on.

2 I had a question. Is there a witness testifying in
3 Spanish? Or not?

4 MS. BOLSTAD: Not one of my witness.

5 I think, Mr. Sepp, maybe.

6 MR. SEPP: Possibly, but I won't know.

7 THE COURT: All right.

8 MR. SEPP: Again, it depends on what Mr. Baker has to
9 say.

10 THE COURT: So it may be that we delete the Spanish
11 interpretation instruction, for example, at the end of the
12 case, if no witness is testifying in Spanish.

13 MS. BOLSTAD: The one clarification on that is one
14 exhibit --

15 THE COURT: Yes.

16 MS. BOLSTAD: -- No. 80, was translated from Spanish
17 into English. And we've stipulated to the admissibility of
18 that translation.

19 THE COURT: All right. We can work with that.

20 That would not affect the jury -- the jury
21 instruction is the one that tells the jury that if there's a
22 translation of testimony, they're to take the English-language
23 translation.

24 But -- all right. We'll work on that.

25 Mr. Andersen or Mr. Sepp, do you have any matters for

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1 tonight, for the record?

2 MR. ANDERSEN: No.

3 MR. SEPP: Not tonight, no, your Honor.

4 THE COURT: All right. 8:30, please, everybody in
5 your places. And we can get on with the law issues or anything
6 else you may have identified overnight that we need to address.

7 Thank you. It's been a hard day's work from
8 everybody's perspective.

9 (Pause.)

10 THE COURT: Everything all right. Mr. Sepp?

11 MR. SEPP: Oh, yes, sorry. No, we're just --

12 THE COURT: I just want to be sure it's nothing that
13 needs to be addressed on the record. Okay.

14 MR. SEPP: No, it's not.

15 THE COURT: All right. Good evening, everyone.
16 We're off the record.

17 (Conclusion of proceedings, 5:01 p.m.)

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--oOo--

I certify, by signing below, that the foregoing is a correct stenographic transcript of the oral proceedings had in the above-entitled matter this 2nd day of May, 2016. A transcript without an original signature or conformed signature is not certified. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

/S/ Amanda M. LeGore

AMANDA M. LeGORE, CSR, RDR, CRR, FCRR, CE
CSR No. 15-0433 EXP: 3-31-2018